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# COWDERY'S FORMS AND PRECEDENTS

BEING

## LEGAL FORMS AND PRECEDENTS

FOR

### COURT PROCEEDINGS AND BUSINESS TRANSACTIONS,

FOR THE USE OF

JUDGES, LAWYERS, CLERKS, CONVEYANCERS, NOTARIES AND MEN OF AFFAIRS,

### WITH NOTES

ADAPTING THE SAME TO THE CODES AND STATUTES OF  
ARIZONA, CALIFORNIA, COLORADO, IDAHO, MONTANA,  
NEVADA, NORTH DAKOTA, OREGON, SOUTH  
DAKOTA, UTAH, WASHINGTON,  
AND WYOMING.

By JABEZ F. COWDERY,

AUTHOR OF

*Third Edition of "Bancroft's Forms," "Cowdery's Justice, Treatise," etc.*

SAN FRANCISCO:  
BANCROFT-WHITNEY CO.  
LAW PUBLISHERS AND LAW BOOKSELLERS,  
1895.

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## PREFACE.

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THE foundation of this work was laid in *Hent's Forms and Use of Blanks*, published in two volumes in 1866. In 1876 a new edition of Hent's book in one volume was edited by J. C. BATES. In 1881 a third edition, prepared by the editor of the present work, was issued.

While the compiler has had full permission to use any of the material contained in the books mentioned, he has added many new forms drawn especially for this work. The notes, comments, references, and criticisms are original in this volume.

Particular attention has been given to the statutes and precedents as construed by the judicial decisions of Arizona, California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. The object has been to present such a compilation of forms, together with direct reference to the statutes, as will enable each jurisdiction to use them intelligently.

Comprehensive in character, the first part embraces, for all the States named, business forms, such as Acknowledgments, Agreements, Bonds, Deeds, Leases, Mining Forms, Mortgages, Notices, Power of Attorney, Releases, Sales, Wills, and numerous other forms, for use of Clerks, Conveyancers, Lawyers, Notaries, and all other men of affairs.

The second part is devoted to forms for procedure in all courts at *Nisi Prius*. A complete list of forms, with full reference to the statutes, will be found, for both civil and criminal proceedings for the Justice's Court, and for Circuit, County, District, and Superior Courts, and for Probate Matters.

J. F. COWDERY.

SAN FRANCISCO, October, 1895.







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# FORMS AND PRECEDENTS

PARTICULARLY ADAPTED FOR USE IN

ARIZONA,	NORTH DAKOTA,	MONTANA,	UTAH,
CALIFORNIA,	SOUTH DAKOTA,	NEVADA,	WASHINGTON,
COLORADO,	IDAHO,	OREGON,	WYOMING.

## PART I.—MISCELLANEOUS.

It may be said generally that all the forms printed in this *First Part* are universally applicable, or may be so made by the exercise of very little thought. This first part is intended for the use of lawyers, notaries, clerks, and others not engaged in general business.

This is not a Business Man's Form Book or Guide, but it is intended for use by those who generally think and write for a consideration for others. As to the forms and precedents, they are not advertisements of a publisher's "blanks," but they are the blanks themselves—the precedents themselves. The precedents are taken from the California law and practice.

The *Second Part* will deal entirely with Courts. The notes will be fuller, because they need to be. The notes in this part are intended for use in the State where applicable, and for general, not special, reference in other places. A California lawyer knows where to find the law of his State without their assistance, but he does not know where to find the law of Washington, or Arizona, or Colorado. The notes, necessarily brief, merely drop a hint.

It may be justly said that some of the precedents are too full—too prolix. If so, it is a valuable fault. If the forms were printed and sold by a law publisher, that would be a serious objection to them; but such not being the fact, the person using them may drop all unnecessary matter and jump at one bound to what he wants. It will, however, be found difficult to reduce some of them (the Insolvency forms) to less compass.

## AFFIDAVITS.

### No. 1.—Affidavit, General.

STATE OF California, }  
County of Nevada. } ss.

*William Jones*, being duly sworn, says: That on the *first day of July, 1852*, I resided at *Grass Valley*, in said county; that at the time last aforesaid *William Henry Powers* was a resident of the same place. I was well acquainted with the said *Powers* until his death, which occurred on the day aforesaid. Previous to this, the said *Powers* informed me that he was the *only son of Henry Peters Powers*, of *Rochester*, State of *New York*. At the time of his death he was about *forty years* old. He had *light hair and blue eyes*. He weighed about *one hundred and eighty pounds*. I am ready to testify to the foregoing matters at any time when called upon to do so. My age is *seventy-three*, and I reside at *Red Dog*, in said county.

WILLIAM JONES.

Subscribed and sworn to before me, }  
this 6th day of April, 1895. }  
[SEAL.] Henry Jacobs, }  
Notary Public. }

NOTE.—This is the usual form of affidavits given by persons knowing certain facts, for the use of those who contemplate legal proceedings, or who desire the information for other purposes.



**No. 2.—Affidavit for Marriage License.**

In the matter of the application of  
*James Dixon*  
 For License to Marry  
*Sarah Nixon.*

*James Dixon and S. Solon Hall, being first duly sworn, each for himself, doth depose and say: That he knows the above named Sarah Nixon, that she is of the age of seventeen years, and a resident of the City of Sacramento, County of Sacramento; and the said James Dixon being further sworn, deposes and says that his name is James Dixon, that he is of the age of sixty years, and a resident of Brighton, in said County of Sacramento, in said State of California; that the said Sarah Nixon is the widow of John Brown, who died in December, 1895; [or that she was the wife of F. Smith, from whom she was divorced on the sixteenth day of March, 1895; or, if the affidavit is made by the father, or mother, or guardian of a minor, that such person consents to the marriage].*

(Subscribed and sworn to.)

**No. 3.—Affidavit of Sureties annexed to Public Officer's Official Bond.**

STATE OF *California*,  
 City and County of *San Francisco.* } ss.

*S. N. Putnam, J. M. Wood, and J. C. Bates, sureties in the foregoing bond, being separately and duly sworn, each says for himself, that he is a resident and freeholder [or householder] within the State of California, and County aforesaid, and that he is worth the amount for which he becomes liable as surety on the foregoing bond, over and above all his debts and liabilities, in unencumbered property situated within this State, exclusive of property exempt from execution and forced sale.*

(Subscribed and sworn to.)

**No. 4.—Affidavit of Finder of Lost Property.**

STATE OF *California*,  
 City and County of *San Francisco.* } ss.

*Charles W. Coon, being duly sworn, deposes and says: That he is a citizen of the United States, above twenty-one years of age, and a resident of No. 927 Howard Street, in the City and County of San Francisco, State of California; that on the fifth day of July, 1894, in the Bay of San Francisco, in an open boat, apparently abandoned, there being no person in the same, and which boat was being driven by the wind and tide towards the bar, off Fort Point, at the rate of about eight miles an hour, the following described property, viz:*

One lot of fishing tackle, consisting of lines, rods, nets, baskets, hooks, etc.; one demijohn of Cutter's A 1 whisky; one large basket of lunch; two pairs of rubber boots; one box of cigars; one package of smoking tobacco; two pipes; two rolls of blankets; one small tent; one coffee-pot; two tin plates; two table knives and forks, and a small lot of groceries.

That he saved the said property by taking the said boat to Washington street wharf, and by storing the said goods in Chargehigh & Keepall's warehouse, No. 7282 Webb Street, in said city; that he does not know who the owner of said property is; that the value thereof is over one hundred dollars, and that he has not recently withheld, or disposed of, any part of said property.

(Subscribed and sworn to.)

NOTE.—Cal. Political Code, sec. 3136.

### No. 5.—Affidavit of Tender of Payment—Demand to be Restored to Possession.

[TITLE OF COURT AND CAUSE.]

S. S., being duly sworn, says that on the *twenty-sixth* day of *August*, as ordered by [*state who made the order*] he tended to *W. B.*, the plaintiff in this action, the sum of *one hundred and two dollars*, and demanded that he surrender to affiant the premises described in affiant's petition herein and in the complaint, and at the same time affiant delivered to said *W. B.* a copy of the order or judgment of court herein, restoring affiant to possession of said premises upon payment as aforesaid; a copy of which order or judgment is hereto attached and referred to and marked "*Exhibit A*"; that the said *W. B.* refused to restore affiant to the said possession, or to accept said money; and replied *that he was in possession of said premises, and proposed to stay there.*

Wherefore, affiant prays that the said *W. B.* may be cited to show cause why he should not be punished for contempt of court.  
(Subscribed and sworn to.)

NOTE.—Cal. C. C. P., secs. 1174, 1209.

## AGREEMENT-CONTRACT.

### No. 6.—Agreement and Specifications—To Construct Flume, Ditch, etc.

THIS AGREEMENT, made and entered into this *thirtieth* day of *March*, A. D. 1887, between the *San Diego Flume Company*, a corporation, organized and existing under the laws of California, the party of the first part, and *Joseph Johndrew*, of *San Diego, California*, the party of the second part, witnesseth:

That the said party of the second part, for and in consideration of the compensation and payments hereinafter promised and

agreed to be made by said party of the first part, hereby covenants, promises, and agrees to do and perform certain work (*in accordance with the plans and specifications hereunto attached and which are hereby made a part of this contract*) for said party of the first part, along the *flume line* of said party of the first part from said first party's diverting dam on the *San Diego River* to its, said first party's, *city reservoir near San Diego*. Said works so contracted and agreed to be done and performed by said second party hereto for said first party to consist as follows:

FIRST — GRADING.

*Grading flume-bed, surface ditches, and tunnel approaches from first party's diverting dam on the San Diego River to its, said first party's, proposed city reservoir near San Diego.*

SECOND — TUNNELS.

Excavating of about *three thousand lineal feet of tunnels and lining of same with masonry, and also timbering same, in accordance with plans and specifications hereto attached.*

It is hereby expressly agreed and understood by and on the part of the second party hereto, that if in the opinion of the *Chief Engineer* of said first party hereto, or his assistant, any work under this contract is improperly done or improper materials used therein, the same shall be immediately, upon instructions of said *Chief Engineer*, or his assistant, to said second party, be replaced and removed in accordance with said instructions.

It is further expressly agreed by and on the part of said second party hereto, that said first party shall have the right to *change the line or grade of flume-bed or tunnels at any time such change is recommended by its, said first party's, Chief Engineer.*

It is further agreed by said party of the second part hereto, that he, said second party, will furnish and provide at his *own cost all tools and implements of every kind and description used in and about said work*, and also all material used and employed in its construction other than lumber for tunnel lining, and also all lime and cement required to be used, in accordance with specifications hereto attached, *which said lumber, lime, and cement said first party hereto agrees to furnish and deliver free of cost to said second party hereto upon the ground where same is of easy access to said second party, and where same can without unusual delay be delivered by said first party.*

Said second party hereto hereby agrees to furnish at his own cost ample and suitable protection from damage by weather for all lime and cement delivered as aforesaid to said party of the second part.

In case of any damage to any portion of work done under this contract by reason of *freshets, rains, or accidents, or any cause whatsoever*, before final acceptance of said work, by the *Chief Engineer* of said first party, said second party shall and will at his own proper cost and expense fully repair the same.



It is hereby further expressly agreed by and on behalf of said second party hereto, that no part of work under this contract shall be sublet without the consent in writing of said first party hereto.

Said second party hereto hereby covenants and agrees to hold harmless said first party herein as against all liens and claims of laborers and mechanics for labor done and materials furnished under this contract, and hereby grants to said first party the option, within its, said first party's, discretion, through its duly accredited agent, to be present at the payment of, and ascertain that all wages of employees of the contractor herein,—i. e., the party of the second part,—and all sums of money due sub-contractors, if any, and all sums of money due for materials furnished, are paid from the amounts to be paid on the *monthly* and also on the final estimates, before paying over to said second party herein any balance that may be due hereunder.

Said second party hereto hereby covenants and agrees to begin work under this contract within *ten days* from date hereof, and to complete same on or before the *first day of November, 1887*; and in case of failure of said second party thereto to diligently prosecute work under said contract, or according to specifications, or fails to hold harmless said first party hereto as against all and every lien of laborers, mechanics, and for materials furnished, said first party herein is hereby granted the right, upon written notice to said second party, to cancel said contract, and to complete under its own direction the work herein contracted to be done, or to contract anew therefor, as in its judgment shall be deemed proper, and to declare forfeited, as stipulated and liquidated damages for the non-performance of the covenants and agreements herein contained, the unpaid balance and all thereof, then and at the date of said written notice in the hands of said first party herein.

Said second party hereto hereby further covenants and agrees to hold harmless said first party herein as against all damages at law resulting from any accident or accidents to men in his, said second party's, employ under this contract.

Said first party herein further covenants and agrees to provide all right of way along its heretofore mentioned flume line as expeditiously as possible; and said second party hereto hereby covenants and agrees to hold said first party harmless in case of failure to provide the necessary right of way caused by any delay resulting from legal proceedings to procure the same.

And for and in consideration of the foregoing covenants, promises, and conditions on the part and on behalf of said second party hereto to be kept and performed, said first party hereto hereby promises and agrees as follows, to wit:

To pay to said second party as herein set forth:

For mason work, per perch of 16½ cubic feet.....	\$ 2 00
For concrete work, per cubic foot.....	40
For earth work, per cubic yard.....	25

<i>For all gravel and cement, per cubic yard.....</i>	<i>30</i>
<i>For grading of surface rock, per cubic yard.....</i>	<i>1 25</i>
<i>For approaches to tunnels, per cubic yard.....</i>	<i>1 00</i>
<i>For approaches to tunnels, hard rock, per cubic yard...</i>	<i>2 00</i>
<i>Running tunnels (3,000 feet, more or less), per lineal foot, (size thereof as per plan "A" to set contract attached,).....</i>	<i>15 00</i>
<i>Timbering tunnels, per lineal foot.....</i>	<i>40</i>

Said first party hereto hereby reserves the right, and said right is hereby conceded by said second party, to change, alter, or modify the shape of all tunnels to be run, and to enlarge or decrease in size the same as the Chief Engineer of said first party may direct, and said party of the first part shall pay an amount per lineal foot for said tunnel work as the changed or altered size thereof shall bear to the annexed plan, marked plan "A," and said heretofore mentioned sum or rate of \$15 per lineal foot.

Payments for the foregoing work to be made by said first party to said second party as follows:

*Fifty (50) per cent. cash, on estimates to be made monthly, on or about the first of each and every month, until the completion of said work, and twenty-five (25) per cent. in the first mortgage six (6) per cent. twenty-year bonds of said first party, the remaining twenty-five (25) per cent. to be paid him, said second party, in above mentioned first mortgage bonds, but the same is to be held by said first party herein until the full completion of this contract, and to bear no interest until delivery to said second party by said first party herein. Said bonds to be taken by said second party at ninety-five (95) cents on the dollar, and in no event to bear interest until delivery thereof.*

NOTE.—It must be kept in full view all the time that, in California, unless the contract price is payable in money, a lien does not attach. C. C. P., sec. 1184.

In witness whereof, said party of the first part, by its President and Secretary thereunto, first duly authorized, has caused its corporate name and seal to be attached hereto, and said party of the second part has set his hand and seal the day and year first above written.

(Signed and dated.)

## SPECIFICATIONS.

### GRADING.

Under this head is included all excavations and embankments required for the formation of the flume bed, pits for trestle bents, surface ditches, tunnel approaches, and the crossing or change of wagon roads.

All cuttings shall be measured in the excavations and estimated by the cubic yard under the following heads:

### EARTH.

*Will include all excavations irrespective of the material, except the*



same be gravel, cement, surface or hard blasting rock in quantity and at any one place of more than thirty (30) cubic yards.

HARD ROCK.

Will include all hard blasting rock occurring in quantity at any one place exceeding thirty cubic yards.

The flume bed will be graded twelve (12) feet wide, and with such slopes as the engineer may designate.

All material excavated (except hard rock) shall be wasted at least three feet beyond slope of cuts, and outside line of timber work for flume, and on the lower side of the flume line, which shall be designated by the engineer.

The hard rock excavated must be deposited in the adjacent embankments when the haul does not exceed one hundred (100) feet. Large boulders not broken up and difficult to move may be wasted.

Boulders or other material above the flume line which the engineer may consider will endanger the flume must be removed, and will be paid for at contract price for similar material.

Public roads must be kept open and not obstructed or endangered by any of the material handled in grading, and due notice given teams and travelers on public roads when blasts that might endanger them are about to be set off.

TUNNELS.

Tunnels must be excavated to the lines as shown on the drawings of the cross-sections and be lined or left without lining, as the engineer may direct.

Tunnel work will be classified as follows:

First. Tunnel excavation in earth will include all material excavated, except the same be in hard blasting rock.

Second. Tunnel excavation in hard blasting rock.

Third. Stone masonry will include the stone work in the portals and walls of tunnel lining and plastering the same.

Fourth. Concrete will include the concrete work in bottom of tunnels, also the lining of the sides of tunnels in hard rock and plastering the same.

Fifth. Tunnel timbering will include the timber lining and lagging of roof above the stone masonry, as shown on plans hereafter, at the option of the engineer, to be submitted and adopted.

The tunnel excavation will be estimated by the lineal foot, and will include the length contained between the two portals.

Stone masonry and concrete work will be estimated by the cubic yard.

Tunnel timbering will be estimated by the lineal foot of tunnel for the portion that may be timbered.

Where the tunnels require lining the general form of masonry will be as shown on the drawings hereafter, at the option of the engineer, to be submitted and adopted, or increased in thickness, as the engineer in his judgment may deem necessary.

*The stone masonry in portals and tunnel lining will be of broken range rubble work, of good quality, laid in mortar, to be well bonded and leveled.*

*The arch portals to be built at each end of tunnels, and arch carried ten feet or less inside of tunnel.*

*The whole inside surface of the stone masonry to be plastered smooth with one coat of fine cement mortar.*

*Any spaces remaining between the walls or lagging and inside of tunnels as excavated to be completely filled as the work progresses with dry rubble or other material, solidly tamped in and acceptable to the engineer.*

*The proportions of sand, cement, and lime in the mortar used and of material for concrete, as well as the manner of mixing the same and putting it in the work, shall be as directed by the engineer.*

*In all cases where the word "engineer" is used, the engineer in charge of construction is meant, but the directions of any subordinate engineer shall be obeyed when transmitting the orders of his superiors.*

Specifications accompanying contract this day signed.

See plan "A," attached to original contract on file in office of San Diego Flume Company.

(Signed as before.)

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## AGREEMENTS.

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### No. 7.—Agreement.

**THIS AGREEMENT**, made the *nineteenth* day of *June*, in the year of our Lord one thousand eight hundred and *ninety-five*, between *John Doe*, of the *City and County of San Francisco*, State of *California*, the party of the first part, and *Richard Roe*, of the same place, the party of the second part, witnesseth:

That the said party of the first part, in consideration of the covenants, on the part of the said party of the second part, hereinafter contained, hereby covenants, with the said party of the second part, that the said party of the first part will deliver to the said party of the second part, at his storehouse in said City and County of San Francisco, one thousand (1000) bushels of wheat, of good merchantable quality, on or before the 10th day of October, A. D. 1895.

And the said party of the second part, in consideration of the said covenants, on the part of the said party of the first part, hereinbefore contained, agrees to and with the said party of the first part, that the said party of the second part will pay to the said party of the first part, or his order, one dollar in U. S. gold coin, for each and every bushel of said wheat so delivered, immediately on the completion of the delivery of said one thousand bushels of wheat in good order and condition, as aforesaid.



And for the true and faithful performance of all and every of the said covenants, the said parties to these presents bind themselves, each unto the other, in the penal sum of *three hundred (300)* dollars, gold coin of the United States of America, as fixed, settled, and liquidated damages, to be paid by the failing party, to the other, his heirs or assigns.  
(Signed and sealed.)

**No. 8.—Agreement—General Submission to Arbitration.**

WHEREAS, differences are now existing, between *A. B.*, of, *etc.*, and *C. D.*, of, *etc.*, in relation to divers subjects of controversy and dispute, partnership matters and accounts:

Now, therefore, we, the undersigned *A. B.* and *C. D.*, aforesaid, do hereby mutually covenant and agree, that *P. Q.*, *R. S.*, and *T. U.*, of, *etc.*, or any two of them, shall arbitrate, award, and determine, of and concerning all manner of actions, and causes of actions, and demands whatsoever, now pending, existing, or held, by and between us, the said parties; and we do further mutually covenant and agree, to and with each other, that we will in all things faithfully observe and abide by the decision and award said arbitrators shall make in writing, on or before the *tenth* day of *January*, 1895.

Witness our hands and seals, *etc.*

**No. 9.—Agreement not to Sue.**

KNOW ALL MEN BY THESE PRESENTS: That whereas *John Doe*, of the *City of Oakland*, in the County of *Alameda*, and State of *California*, is justly indebted to us, *Richard Roe*, *John Smith*, and *Paul Brown*, in divers sums of money, which the said *John Doe* is unable to pay:

Now, we and each of us, for ourselves, our and each of our heirs, executors, administrators, and assigns, for and in consideration of the agreement and covenant of the said *John Doe*, hereinafter contained, do covenant and agree with the said *John Doe*, that we will not, nor will either or any of us, at any time during *two years* from the date hereof, sue, prosecute, arrest, molest, or trouble the said *John Doe*, in respect to or on account of any debts now by him due or owing to us, or any or either of us.

And the said *John Doe*, in consideration of the foregoing covenant and agreement, for himself, his heirs, executors, and administrators, covenants and agrees with the creditors aforesaid, that he will faithfully apply all moneys, property, and effects that he may earn or procure during the said term of *two years* to the payment, in gold coin of the United States, of his debts owing to the creditors aforesaid, in proportion to the amount due and owing to each.

In witness whereof, *etc.*

**No. 10.—Agreement—Composition with Creditors.**

KNOW ALL MEN BY THESE PRESENTS: That *A. B.*, of *Jackson*, County of *Amador*, State of *California*, is indebted unto us, his said several creditors, in divers sums of money; but by reason of sundry losses, happened unto the said *A. B.*, he is become unable to satisfy our demands, and therefore we, the said creditors, have resolved and agreed to undergo a certain loss, and to accept of *twenty* cents, gold coin of the United States, for every dollar owing by the said *A. B.* to us, the several and respective creditors aforesaid, to be paid, in such gold coin, in full satisfaction and discharge of our several and respective debts:

Now we, the said creditors of the said *A. B.*, do, for ourselves, severally and respectively, and for our several and respective heirs, executors, and administrators, promise and agree, to and with the said *A. B.*, by these presents, that we, the said several and respective creditors, shall and will accept of and from the said *A. B.*, for each and every dollar that the said *A. B.* does owe to us, the said several and respective creditors, the sum of *twenty* cents, payable in gold coin of the United States, in full discharge and satisfaction of the several debts and sums of money that the said *A. B.* does owe and stand indebted unto us; to be paid unto us, the said several and respective creditors, within the time or space of six months next after the date of these presents; and we, the said several and respective creditors, do severally and respectively covenant, promise, and agree, to and with the said *A. B.*, that the said *A. B.* shall and may, from time to time, and at all times, within the said time or space of *twelve* months next ensuing the date hereof, assign, sell, or otherwise dispose of, all his goods and chattels, wares and merchandise, at his own free will and pleasure, for and towards the payment and satisfaction of the said *twenty* cents for every dollar the said *A. B.* does owe and is indebted unto us, as aforesaid; and that neither we, the said several and respective creditors, nor any or either of us, shall or will, at any time or times hereafter, sue, arrest, molest, or trouble the said *A. B.*, or his goods and chattels, for any debt or other thing, now due or owing to us, or any of us, his respective creditors: so as the said *A. B.* well and truly pay, or cause to be paid, in such gold coin, the said sum of *twenty* cents for every dollar he does owe and stand indebted to us, respectively, within the said time or space of *six* months next ensuing the date hereof; and all and every of the grants, covenants, agreements, and conditions, herein contained, shall extend to and bind our several executors, administrators, and assigns.

In witness whereof, *etc.*

NOTE.—The account of each creditor's claim should be given in a schedule annexed, set opposite the respective name of the creditor.

**No. 11.—Agreement—Building.**

THIS AGREEMENT, made the *tenth* day of *July*, one thousand eight hundred and *ninety-four*, by and between *John Doe*, of *Amador City*, in the County of *Amador*, and State of *California*, of the first part, and *Richard Roe*, of the said *Amador City*, of the second part, in these words:

The said party of the second part covenants and agrees to and with the said party of the first part, to make, erect, build, and finish, in a good, substantial, and workmanlike manner, a *two-story brick dwelling-house*, on the lot of land situate in said county, and described as follows:

[Description of Lot.]

agreeable to the drafts, plans, and specifications hereunto annexed, of good and substantial materials, by the *first* day of *January* next.

And the said party of the first part covenants and agrees to pay unto the said party of the second part, for the same, the sum of *two thousand* dollars, gold coin of the United States, as follows: *The sum of one thousand dollars when the building is inclosed and the roof put on, and the remaining one thousand dollars when the building is completed.*

And for the true and faithful performance of all and every of the covenants and agreements above mentioned, the parties to these presents covenant and agree, each with the other, that the sum of *one thousand* dollars, gold coin of the United States, as fixed, settled, and liquidated damages, shall be paid to the other by the failing party.

In witness whereof, *etc.*

**No. 12.—Agreement with a Mason.**

THIS AGREEMENT, made the *ninth* day of *September*, A. D. one thousand eight hundred and *ninety-four*, between *A. B.*, of *Oakland*, *Alameda County*, and *C. D.*, of the *City and County of San Francisco*, witnesseth:

That the said *C. D.*, for the consideration hereinafter mentioned, promises and agrees, to and with the said *A. B.*, that he will do and perform, by himself or persons in his employ, in a good and workmanlike manner, and with materials to be furnished by the said *A. B.*, all the mason and plastering work to be done in and about the erecting and building a new dwelling-house on the *fifty-vara* lot No. *124*, of the said *A. B.*, at *northeast corner California and Webster Streets*, in the *City of San Francisco*, according to the plans and specifications hereto annexed; and, also, that he will use the utmost care in working up the materials to be furnished by the said *A. B.*, as aforesaid, to the best advantage for the said *A. B.*, and that he will complete the said work on or before the *first* day of *December*, *1894*.

And the said *A. B.*, in consideration of the premises, agrees to



furnish and provide good and sufficient materials for the said work, at such time or times as the said *C. D.* may request; and to pay, in gold coin of the United States, the said *C. D.*, for all such work as shall be performed by him or his servants in and about the said new dwelling-house, ornamental work excepted, on the completion of the same, at and after the rate of *fifty cents* per yard of three feet square, and the sum of *six hundred dollars* for all the ornamental work done or performed in and about the said dwelling-house—it being expressly understood and agreed, that no extra charge is to be demanded or allowed for corners, arches, jambs, joints, fireplaces, or any other kind of work not strictly ornamental, but all the work is to be measured as plain, except the ornamental work to be paid for, as aforesaid, in gross.

In witness whereof, *etc.*

### No. 13.—Agreement—Cultivate Land on Shares.

THIS AGREEMENT, *etc.*, witnesseth:

That *John Doe* agrees with *Richard Roe*, that he will properly plow, harrow, till, fit and prepare for sowing, according to the rules of good husbandry, all that certain field of ground belonging to the said *Richard Roe*, which field lies, *etc.*

[Description of the Field.]

containing about *fifty acres*, and to sow the same with good *clean wheat*, finding *one half* of the seed *wheat* necessary therefor, on or before the *tenth day of January, 1894*; and that he will at the proper time cut, harvest, and thrash the said *wheat*, and properly winnow and clean the same, and deliver the *one-half* part of the said *wheat* to the said *Richard Roe*, at his *barn, on his premises*, in the said *City of Oakland, near his dwelling-house*, within *ten days* after the same shall have been cleaned; and will carefully stack the *one half* part of the straw on the *premises* of the said *Richard Roe*, near to his barn aforesaid.

And the said *Richard Roe*, in consideration of the foregoing agreement, promises and agrees, to and with the said *John Doe*, that he may enter in and upon the said field for the purpose of tilling and sowing the same, and of harvesting the crop; and free ingress and egress have and enjoy for the purposes aforesaid; and that he will furnish to the said *John Doe* one half part of the seed *wheat* necessary to sow the same, on or before the *first day of January* next, and permit the said *John Doe* to thrash and clean the *wheat* upon the premises of the said *Richard Roe*.

In witness whereof, *etc.*

### No. 14.—Agreement—Making Flour-Barrels.

THIS AGREEMENT, *etc.*, witnesseth:

That *John Doe*, in consideration of the agreement, on the part of *Richard Roe*, to be performed, covenants with the said *Richard*

*Roe*, that he will make and deliver to the said *Richard Roe*, during the term of *one year* next ensuing from the date hereof, *one thousand* merchantable flour-barrels in each *week*, said flour-barrels to be made of good, hard, well-seasoned white oak stuff, and the hoops to be of *black ash*.

And the said *Richard Roe*, in consideration thereof, agrees to pay, in gold coin of the United States, to the said *John Doe*, at the rate of *twenty* cents for each barrel, such payment to be made on each *thousand* barrels immediately on the delivery thereof, until the whole quantity is made and delivered.

In witness whereof, *etc.*

NOTE.—This form can be varied to embrace any known article.

### No. 15.—Agreement of Surety—Payment of Rent.

In consideration of the letting of the premises above described, and for the sum of one dollar, I do hereby become surety for the punctual payment of the rent, and performance of the covenants, in the above written agreement mentioned, to be paid and performed by *C. D.*, as therein specified; and if any default shall at any time be-made therein, I do hereby promise and agree to pay unto the landlord in said agreement named, the said rent, or any arrears thereof that may be due, and fully satisfy the conditions of the said agreement, and all damages that may accrue by reason of the non-fulfillment thereof, without requiring notice or proof of demand being made.

Given under my hand, *etc.*

### No. 16.—Agreement—Copartnership between Merchants.

ARTICLES OF AGREEMENT, made and entered into this *sixth* day of *June*, 1895, between *A. B.*, of, *etc.*, of the one part, and *C. D.*, of, *etc.*, of the other part, witnesseth as follows:

The said *A. B.* and *C. D.* have joined, and by these presents do join themselves, to be copartners together, in the business of general *country* merchants, and all things thereto belonging; and, also, in buying, selling, and retailing all sorts of wares, goods, merchandise, and commodities, and all kinds of produce usually kept and sold in a *country* store, and in such commission business as may appertain to the same; which said copartnership is to be conducted under the name, style, and firm of *B. & D.*, at the town of *Dutch Flat*, County of *Placer*, State of *California*, and shall continue from the *first* day of *July*, 1895, for and during, and unto the end and term of *two* years, from thence next ensuing, fully to be complete and ended.

And to that end and purpose the said parties to these presents have, the day of the date hereof, delivered in as stock the sum of *one thousand* dollars, share and share alike, to be used, laid out, and employed in common between them for the management of



the said business, as aforesaid, to their mutual benefit and advantage; and it is agreed between the said parties to these presents, that the capital stock of the firm hereby constituted shall be made and kept up to the sum of *one thousand* dollars, share and share alike; that the same may at any time be reduced or extended by agreement between the parties hereto; and that the said capital stock, together with all credits, goods, wares, or commodities bought or obtained by the said firm, by barter or otherwise, shall be kept, used, and employed in and about the business aforesaid; and, for that purpose, each partner shall have power to use the name of the firm, and to bind the same, in making contracts and purchasing goods at the City of San Francisco or elsewhere, and in otherwise trading, buying, and selling on account of the said firm, and for the benefit and behoof thereof, and not otherwise; provided, however, that neither party shall contract liabilities in the name and on the credit of the firm, in purchasing and replenishing their stock of goods and merchandise, to exceed the sum of *five hundred* dollars, without the consent of the other partner; and, also, that neither of the said copartners shall or will, during the said term, exercise or follow the trade or business of merchandising, as aforesaid, in the said County of *Placer*, for his private benefit or advantage; but shall, at all times, do his best endeavor, in and by all lawful means, to the utmost of his skill and power, for the joint interest, profit, benefit, and advantage of the firm aforesaid; and truly employ, buy, sell, and merchandise with the stock aforesaid, and the increase and profit thereof, in the business of merchants aforesaid; and, also, that the said parties shall and will, at all times during the said copartnership, bear, pay, and discharge equally between them all rents and other expenses.

In witness, *etc.*

**No. 17.—Agreement to Renew Partnership, to be Indorsed on Original Article.**

WHEREAS, the partnership formed by and mentioned in the within article of agreement has this day expired [*or*, will expire on the *first* day of *July* next] by the limitations contained therein; it is therefore hereby agreed, that the same shall be continued, on the same terms, and with all the provisions and restrictions in said agreement mentioned, for the further term of *four* years from this date [*or*, from the *first* day of *October*, 1895.

Witness our hands, *etc.*

**No. 18.—Agreement of Dissolution, to be Indorsed on the Original Articles.**

By mutual consent of the undersigned, the parties to the within agreement, the partnership thereby formed is wholly dissolved, except so far as it may be necessary to continue the



same for the final liquidation and settlement of the business thereof; and said agreement is to continue in force for such purpose until such final liquidation and settlement be made, and no longer.

Witness our hands, *etc.*

**No. 19.—Agreement with Agent or Broker to Sell Land.**

It is agreed that *O. F. Von Rhein*, shall, as *my* agent, contract that *I* will sell the following described land to any purchaser found by him within *thirty* days from date hereof, viz., situated in the *City and County of San Francisco, State of California*, and known as *fifty-vara lot No. 7, in Block No. 763, of the Western Addition*. The price to be not less than *ten thousand dollars in gold coin of the United States*. I agree to furnish to the purchaser within *ten days* after a deposit of *two hundred and fifty dollars* is made with *me* or the said *Von Rhein*, an abstract of title to said land, certified to by *Joseph and E. B. Clement*, searchers of records in said *City and County*. The said property to be conveyed free of all incumbrances. The said property shall remain in the hands of the said *Von Rhein* exclusively for *thirty days* from date; and if *he* sells the same within said time, *I* will pay him a commission of *two per cent.* upon the purchase price. All advertising expenses attending the sale to be paid by the said *Von Rhein*.

Witness *my* hand, *etc.*

NOTE.—The law of California requires an agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission, to be in writing, subscribed by the party to be charged, or his agent.

**No. 20.—Agreement for the Sale of Animals.**

THIS AGREEMENT, *etc.*, witnesseth:

That, in consideration of the agreement of the said *Richard Roe*, hereinafter contained, the said *John Doe* agrees to sell and deliver, on the *first day of June* next, to the said *Richard Roe*, at his store in *Sonora*, *one yoke of four-year-old oxen*.

And the said *Richard Roe*, in consideration thereof, agrees to pay to the said *John Doe* *sixty dollars*, gold coin of the United States, immediately upon delivery thereof.

In witness whereof, *etc.*

**No. 21.—Agreement to Sell, or Assign, the Copyright in a Book.**

THIS AGREEMENT, made the *fifteenth* day of, *etc.*, between *A. B.*, of, *etc.*, and *C. D.*, of, *etc.*, bookseller and publisher, witnesseth:

That the said *A. B.* agrees to sell, and does hereby sell, to the said *C. D.*, all his copyright, title, interest, and property, in and to a certain book, written and compiled by the said *A. B.*, entitled

[*title of the book at length*], and entered, and copyright secured by the said A. B., in the *Office of the Librarian of Congress, at Washington, District of Columbia*, on the *sixth day of July*, in the year *1894*; and the said A. B. also agrees to prepare and furnish a fair copy of the said work to the printer to be employed by the said C. D., and to superintend the printing, and examine and correct the proofs thereof as fast as furnished, and to make and complete a full and correct index therefor in due time.

In consideration whereof, the said C. D. agrees to pay unto the said A. B. the sum of *one thousand dollars*, gold coin of the United States, on the *first day of August, 1881*.

NOTE.—Assignment of copyright must be in writing. Act of Congress July 8, 1870.

### No. 22.—Builders' Agreement-Contract.

ARTICLES OF AGREEMENT, made this *nineteenth* day of *December*, one thousand eight hundred and *ninety-five*, between *John Easton*, of the *City and County of San Francisco*, State of *California*, the party of the first part, and *Vernon Campbell*, of said *City and County*, the party of the second part:

First. The said party of the second part does hereby; for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said party of the first part, his executors, administrators, and assigns, that he, the said party of the second part, his executors or administrators, shall and will, for the consideration hereinafter mentioned, on or before the *first day of September, 1895*, well and sufficiently erect and finish the building of brick and stone, upon that certain lot at the northwest-erly corner of *Pine and Montgomery Streets, San Francisco City and County*; said building to have a frontage of *one hundred feet on Pine Street and one hundred and sixty feet on Montgomery Street*, conformable to the drawings and specifications made by *David Farquharson*, and signed by the parties and hereunto annexed, within the time aforesaid, in a good, workmanlike, and substantial manner, to the satisfaction and under the direction of the said *David Farquharson*, to be testified by a writing or certificate under the hand of the said *David Farquharson*, and also shall and will find and provide such good, proper, and sufficient materials, of all kinds whatsoever, as shall be proper and sufficient for completing and finishing all the *foundations, walls, floors, ceilings, roofings*, and other works of said building mentioned in the *plans and specifications*, for the sum of *one hundred thousand (100,000) dollars, gold coin of the United States*.

And the said party of the first part does hereby, for his heirs, executors, and administrators, covenant, promise, and agree, with and to the said party of the second part, his executors, and administrators, that he, the said party of the first part, his executors or administrators, shall and will, in consideration of the covenants and agreements being strictly performed and kept by the said party

of the second part, as specified, well and truly pay, or cause to be paid, unto the party of the second part, his executors, administrators, or assigns, the said sum of *one hundred thousand (100,000) dollars*, gold coin of the United States of America, in the manner following:

*Twenty thousand (20,000) dollars when the mason work is completed; twenty-five thousand (25,000) dollars when all the plasterer's work has been done; and the sum of fifteen thousand (15,000) dollars when all the windows are in, and the balance of forty thousand (40,000) dollars upon the expiration of thirty days after the completion and acceptance of said building.*

[Further conditions.]

Provided, that in each of the said cases a certificate be obtained and signed by the said *David Farquharson, architect*, that the work, upon the completion of which said payments are respectively to be made as aforesaid, has been done in a good, workmanlike, and substantial manner, and in accordance and compliance with this contract and said drawings and specifications.

And it is hereby further agreed, by and between the said parties:

First. The specifications and the drawings are intended to co-operate, so that any works exhibited in the drawings and not mentioned in the specifications, or *vice versa*, are to be executed the same as if it were mentioned in the specifications and set forth in the drawings, to the true meaning and intention of the said drawings and specifications.

[Further conditions.]

Second. The contractor, at his own proper costs and charges, is to provide all manner of *materials and labor, scaffolding, implements, molds, models, and cartage* of every description, for the due performance of the several erections.

[Further conditions.]

Third. Should the owner, at any time during the progress of said building, request any alterations, deviations, additions or omissions from the said contract, specifications, or plans, he shall be at liberty to do so, and the same shall in no way affect or make void the contract, but will be added to or deducted from the amount of the said contract price, as the case may be, by a fair and reasonable valuation.

[Further conditions.]

Fourth. Should the contractor at any time during the progress of said works, refuse or neglect to supply a sufficiency of materials or workmen, the owner shall have the power to provide materials and workmen (after three days' notice, in writing, being given), to finish the said works, and the expense will be deducted from the amount of the said contract price.

[Further conditions.]



Fifth. Should any dispute arise respecting the true construction or meaning of the drawings or specifications, the same shall be decided by said *David Farquharson and Robert Bunker, also an architect*, and their decision shall be final and conclusive; but should any dispute arise respecting the true value of the extra work or works omitted, the same shall be valued by two competent persons—one employed by the owner and the other by the contractor,—and in case they cannot agree, those two shall have power to name an umpire, whose decision shall be binding on all parties.

[Further conditions.]

Sixth. The owner shall not in any manner be answerable or accountable for any loss or damage that shall or may happen to the said works, or any part or parts thereof respectively, or for any of the materials or other things used and employed in finishing and completing the same (loss or damage by fire excepted).

[Further conditions.]

In witness whereof, *etc.*

### No. 23.—Agreement to Sell Personal Property.

THIS AGREEMENT, made the *fifteenth* day of *June*, one thousand eight hundred and *ninety-five*, between *A. B.*, of *Oakland, Alameda County*, and *C. D.*, of the same place, witnesseth:

That the said *A. B.*, for the consideration hereinafter mentioned, agrees to sell to the said *C. D.* *five hundred cords of seasoned oak cordwood*, and to deliver, and securely pile, the same on the *west bank of the Sacramento River*, immediately, in the town of *Colusa* [or, two hundred tons of good quarry stone, suitable for building, and to deliver the same on *Pacific wharf, in the City of San Francisco*], on or before the *sixth* day of *October, 1895*.

In consideration whereof, the said *C. D.* agrees to pay, in gold coin of the United States, to the said *A. B.*, the sum of *eight dollars* for each and every *cord of wood* [or, *tons of stone*], as aforesaid, upon the final and complete delivery thereof.

In witness whereof, *etc.*

### No. 24.—Tenant's Agreement.

THIS IS TO CERTIFY, that *I* have hired and taken from *Robert Day*, all that certain house and premises situate in the City and County of *San Francisco, State of California*, and designated and known by the number *714 Washington Street*, said house containing *eight rooms, besides basement*, for the term of *ten months* from the *twenty-first* day of *December, 1895*, at the monthly rent of *fifty (50)* dollars, payable in gold coin of the United States of America, monthly in advance, on the *twenty-first* day of each and every month.

And *I* do hereby promise to make punctual payment of the

rent, in manner aforesaid, and to quit and surrender the said premises at the expiration of the said term to said lessor, *his* agent, attorney, or assigns, in as good state and condition as reasonable use and wear thereof will permit (damages by the elements alone excepted), and not to let or underlet the whole or any part of the said premises without the written consent of the landlord, under the penalty of forfeiture and damages; and also not to occupy the said premises for any business deemed extra hazardous on account of fire, without the like consent, under the like penalty; nor will *I* expend any money due for rent for repairs, without the written consent of the landlord.

Given under my hand, *etc.*

### No. 25.—Landlord's Agreement.

THIS IS TO CERTIFY, that *I* have let and rented unto *John Brown*, the house and lot above mentioned, designated and known by the number 714 Washington Street, San Francisco, and the sole and uninterrupted use and occupation thereof, for the term of *ten (10) months* from the *twenty-first* day of *December, 1895*, at the monthly rent of *fifty (50) dollars*, payable in gold coin of the United States of America, monthly in advance, on the *twenty-first* day of each and every month. The said premises are not to be used or occupied for any business deemed extra hazardous on account of fire, nor shall the same, or any part thereof, be let, or underlet, without the written consent of the landlord, under the penalty of forfeiture and damages.

Given under my hand, *etc.*

NOTE.—In California a tenant may expend one month's rent for repairs, if he notifies the landlord of dilapidations which he should repair, and which he neglects to do. C. C. 1942.

### No. 26.—Agreement Forming Copartnership.

ARTICLES OF COPARTNERSHIP, made and entered into the *twenty-first* day of *December*, in the year of our Lord one thousand eight hundred and *ninety-five*, between *James Hunt*, of the City and County of San Francisco, State of California, *Charles Hunt*, of said City and County, and *John Smith*, of the same place:

The said parties above named have agreed, and by these presents do agree, to become copartners in business together, under and by the name, firm, and style of "*Hunt & Co.*," in the business of groceries and provisions, and in buying, selling, and vending all sorts of goods, wares, and merchandise to said business belonging, and to occupy the store at No. 213 Battery Street, in said City and County of San Francisco; their copartnership to commence on the *first* day of *July, 1895*, and to continue *five years* thence next ensuing, fully to be completed and ended, and to that end and purpose the said parties have delivered in as capital stock the sum of *thirty thousand (30,000) dollars*, United States



gold coin, share and share alike, to be used and employed in common between them, for the support and management of the said business, to their mutual benefit and advantage.

And it is agreed, by and between the said parties, that at all times during the continuance of their copartnership, they and each of them will give their attendance, and do their and each of their best endeavors, and to the utmost of their skill and power exert themselves, for their joint interest, profit, benefit, and advantage, and will buy and sell merchandise with their joint stock, and the increase thereof, in the business aforesaid; that they shall and will, at all times during their copartnership, bear, pay, and discharge, equally between them, all rents and other expenses that may be required for the support and management of the said business; that all gains, profits, and increase that shall come, grow, or arise from or by means of the said business, shall be divided between them, share and share alike; and all loss that shall happen to their said joint business, by bad debts, or otherwise, shall be borne and paid equally between them; that there shall be kept, at all times during the continuance of their copartnership, perfect, just, and true books of accounts, wherein each of the said copartners shall enter and set down, as well all money by them, or either of them, received, paid, laid out, and expended, in and about the said business, as also all the goods, wares, commodities, and merchandise, by them, or either of them, bought or sold, by reason or on account of the said business, and all other matters and things whatsoever, to the said business and management thereof in any wise belonging; which said books shall be used in common between the said copartners, so that either of them may have access thereto without any interruption or hindrance of the other; that the said copartners, once in each year, during the continuance of the said copartnership, as aforesaid (to wit, on the *first day of January*, in each year), or oftener if necessary, shall make, yield, and render, each to the other, a true, just, and perfect inventory and account, of all the profits and increase by them, or either of them, made, and of all loss, by them, or either of them, sustained; and also, of all payments, receipts, and disbursements, and of all other things by them made, received, disbursed, acted, or suffered, in their said business; and the same account being so made, they shall and will clear and adjust, each to the other, at the time, their just share of the profits so made as aforesaid; [*that during the continuance of the said copartnership, neither of them shall or will indorse any note, or otherwise become security for any person or persons whomsoever, without the consent of the other said copartner;*] that at the end, or other sooner determination of their copartnership, the said copartners, each to the other, shall and will make a true, just, and final account of all things relating to their said business; and in all things truly adjust the same; and that all and every stock and stocks, as well as the gains and



increase thereof, which shall appear to be remaining, either in money, goods, wares, fixtures, debts, or otherwise, shall be divided between them, share and share alike.

[Further covenants.]

In witness whereof, etc.

### No. 27.—Agreement for Sale of Real Estate.

THIS AGREEMENT, made and entered into the *ninth* day of *September*, in the year of our Lord one thousand eight hundred and *ninety-five*, between *George A. Pendleton*, of *San Diego*, County of *San Diego*, and State of *California*, the party of the first part, and *Daniel J. Stow*, of the same place, the party of the second part, witnesseth:

That the said party of the first part, in consideration of the covenants and agreements on the part of the said party of the second part, hereinafter contained, agrees to sell and convey unto the said party of the second part, and said second party agrees to buy, all that certain lot and parcel of land, situate in the *City of San Diego*, County of *San Diego*, and State of *California*, bounded and described as follows, to wit:

[Description.]

for the sum of *fifty thousand (50,000)* dollars, *gold coin of the United States*; and the said party of the second part, in consideration of the premises, agrees to pay to the said party of the first part, the said sum of *fifty thousand (50,000)* dollars in *United States gold coin*, as follows to wit:

*Twenty-five thousand (25,000) dollars, U. S. gold coin, on the execution of this contract; five thousand dollars on the fourth day of January, 1895, and the balance of twenty thousand dollars with interest thereon at the rate of nine per cent. per annum from this date, on the tenth day of September, 1895.*

And the said party of the second part agrees to pay all State, City, and County taxes, or assessments of whatsoever nature, which are or may become due on the premises above described.

In the event of a failure to comply with the terms hereof by the said party of the second part, the said party of the first part shall be released from all obligation in law or equity to convey said property, and the said party of the second part shall forfeit all right thereto.

And the said party of the first part, on receiving such payment, at the time and in the manner above mentioned, agrees to execute and deliver to the said party of the second part, or to his assigns, a good and sufficient deed for the conveying and assuring to said party of the second part, the title to the above described premises free and clear of encumbrances.

And it is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, and assigns of

the respective parties, and that said party of the second part is to have immediate possession of said premises.

In witness whereof, etc.

NOTE.—It goes without saying, that an agreement to sell land must be signed by the party to be charged, or by his agent authorized in writing. All States have statutory provisions to this effect. Only one need be cited: Cal. C. C. sec. 1741.

### No. 28.—Agreement for Sale of Real Estate.

I hereby agree to sell to *Charles Wilson*, at any time within sixty days from the date hereof, *Block No. 327 of the Western Addition, in the City of Downieville, County of Sierra, State of California*, for the sum of seventy-five thousand dollars, cash, on delivery of deed, and which deed shall contain the usual covenants.

Within ten days from date I agree to furnish the said *Charles Wilson* an abstract of title to said land certified by *S. B. Davidson, Esq., Searcher of Records, No. 536 Courthouse Block, Downieville.*

The said *Charles Wilson* has deposited with me one thousand dollars, which I will credit him with on the purchase price, should he complete the purchase; otherwise I will retain the said one thousand dollars as liquidated damages, as it will be extremely difficult to fix my actual damage.

Witness my hand, etc.

I accept the foregoing agreement, and will abide by its terms.

Witness, etc.

NOTE.—In all States, an agreement on the part of the seller of real property to give the usual covenants binds him to insert in the grant covenants of "seisin," "quiet enjoyment," "further assurance," "general warranty," and "against encumbrances." Cal. C. C. sec. 1733.

The covenants mentioned above should be in substance as follows: "The party of the first part covenants with the party of the second part, that the former is now seised in fee-simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all encumbrances; that the party of the first part, and all persons acquiring any interest in the same through or for him, will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same." Id. sec. 1734.

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## APPOINTMENT.

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### No. 29.—Appointment of Deputy by County Clerk.

KNOW ALL MEN BY THESE PRESENTS: That I, *William A. Stuart*, County Clerk of the *City and County of San Francisco, State of California*, do hereby appoint *John A. Reichert*, a Deputy County Clerk of the *City and County* aforesaid.

In witness whereof, etc.

NOTE.—Before any officer enters on the duties of his office he must take and subscribe an "oath of office." The usual form is: "I, *John A. Reichert*, do swear [or affirm] that I will support the Constitution of the United States, and the Constitution of the State of California, and that I will faithfully discharge the duties of *Deputy County Clerk of the City and County of San Francisco, State of California*, according to the best of my ability." C. C. 904.

This form is good everywhere in the absence of exceptions. Then it will be good with the exceptions added. In Oregon an officer must swear that he will himself defend his State against all her enemies. In Nevada the same, and that he has not fought a duel.

## ARBITRATION.

## No. 30.—Agreement to Arbitrate.

## SPECIAL SUBMISSION.

WHEREAS, a controversy is now existing and pending between *Samuel Davis*, of, etc., and *Henry Molineux*, of, etc., in relation to certain mining claims and quartz mills:

Now, therefore, we, the undersigned, *Samuel Davis* and *Henry Molineux*, aforesaid, do hereby submit the said controversy to the arbitrament of *Sol. Woods*, *Thomas Frehill*, and *Ferd Reis*, of, etc., or any two of them; and we do mutually covenant and agree, to and with each other, that the award to be made by the said arbitrators, or any two of them, shall in all things, by us, and each of us, be well and faithfully kept and observed; *provided*, however, that the said award be made in writing, under the hands of the said arbitrators, or any two of them, and ready to be delivered to the said parties in difference, or such of them as shall desire the same, on the first day of May next.

[If it is stipulated that the submission be entered as an order of court, add the following: "and it is hereby agreed and stipulated that this submission to arbitration shall be entered as an order of the Superior Court of the County of Sierra."]

Witness our hands, etc.

## No. 31.—Bond of Arbitration.

KNOW ALL MEN BY THESE PRESENTS: That I, *Samuel Davis*, of, etc., am held and firmly bound to *Henry Molineux*, of, etc., in the sum of one thousand dollars, lawful money [or, gold coin] of the United States, to be paid to the said *Henry Molineux*, or to his executors, administrators, or assigns, for which payment, to be well and faithfully made, I bind myself, my heirs, executors, and administrators, firmly by these presents:

The condition of this obligation is such, that if the above bounden *Samuel Davis*, his heirs, executors, and administrators, shall and do, in all things, well and truly abide by, perform, fulfill, and keep the award, order, arbitrament, and final determination of *Sol. Woods*, *Thomas Frehill*, and *Ferd Reis*, of, etc., arbitrators, appointed to arbitrate, award, order, judge, and determine, of and concerning all and all manner of action and actions, cause and causes of actions, suits, bills, bonds, specialties, judgments, executions, quarrels, controversies, trespasses, damages, and demands whatsoever, at any time heretofore had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed, or depending by and between the said parties, so as the said award be made in writing, under the hands of the said arbitrators, or any two of them, and ready to be delivered to the said parties in difference, or such of them as shall desire the same,



on or before the *first day of May, 1895*, then this obligation to be void, or else to remain in full force.

Witness our hands, *etc.*

NOTE.—Each party may give to the other a similar bond.

### No. 32.—Condition of Bond on a Special Submission.

The condition of the above obligation is such, that if the above bounden *Henry Molineux*, shall well and truly submit to the decision of *Sol. Woods, Thomas Frehill, and Ferd Reis*, named, selected, and chosen arbitrators, as well by and on the part and behalf of the said *Henry Molineux* and *Samuel Davis*, between whom a controversy exists, to hear all the proofs and allegations of the parties, of and concerning a certain mining claim made by and between them aforesaid, on the *first day of May, 1895*, and all matters relating thereto, so as the award be made, *etc.*

Witness our hands, *etc.*

### No. 33.—Notice to Arbitrators of their Appointment.

To *S. W., T. F., and F. R., Esquires* :

You are hereby notified that you have been nominated and chosen arbitrators, as well on the part and behalf of the undersigned *S. D.* of, *etc.*, as of *H. M.*, of, *etc.*, also undersigned, to arbitrate, award, *etc.*; and you are requested to meet the said parties at the office of *F. R.*, in the town of *D.*, aforesaid, on the *third day of, etc.*, at *two o'clock p. m.* of that day, for the purpose of fixing upon a time and place when and where the proofs and allegations of the said parties shall be heard.

(Dated.)

Yours, *etc.*

### No. 34.—Notice of Hearing.

SIR: You will please take notice that the arbitrators have appointed a hearing in the matter above specified, to be had before them, at the office of *S. B. Davidson, Esq.*, in the town of, *etc.*, on the *first day of, etc.*

(Dated.)

Yours, *etc.*

### No. 35.—Arbitrator's Oath.

[To be administered by any officer authorized to administer oaths.]

You do severally swear, faithfully and fairly to hear and examine the matters in controversy between *S. D.*, of the one part, and *H. M.*, of the other part, to make a just award, according to the best of your understanding.

### No. 36.—Another Form.

We, the undersigned arbitrators, appointed by and between *S. D.* and *H. M.*, do swear that we, respectively, will faithfully

and fairly hear and examine the allegations and evidence of the said parties in relation to the matters in controversy between them, and will make a just award therein, according to the best of our understanding.

(Sworn to.)

**No. 37.—Subpoena on Arbitration.**

STATE OF California, }  
Sierra County. } ss.

The People of the State of California to *P. L.* and *F. W.*, greeting :

We command you, and each of you, personally, to appear and attend at the office of *S. B. D.*, in the town of *D.*, in said county, on the first day of *May*, instant, at two o'clock *P. M.* of that day, before *S. W.*, *T. F.*, and *F. R.*, arbitrators chosen to determine a controversy [or, "*certain matters in controversy*"], between *S. D.* and *H. M.*, whereof the submission is on file in this court, then and there to testify in relation thereto before said arbitrators, on the part of the said *S. D.* Hereof fail not, at your peril.

Witness, Hon. *A. H.*, Judge of the *Superior Court* of the County of *Sierra*, and the seal of said court, this first day of *May*, 1895.

**No. 38.—Oath of Witness before Arbitrators.**

You do solemnly swear [or "*affirm*"] that the evidence you shall give to the arbitrators here present on a controversy [or, "*on certain matters in controversy*"], between *S. D.* and *H. M.* shall be the truth, the whole truth, and nothing but the truth. So help you God.

**No. 39.—Revocation by Both Parties.**

To *S. N.*, *T. F.*, and *F. R.*, Esquires :

Take notice, that we do hereby revoke your powers as arbitrators under the submission made to you by us in writing, and entered as an order of the *Superior Court*, [or as the case may be], on the first day of *May*, 1895.

**No. 40.—Notice of Revocation by One Party—Order of Court.**

To *S. D.* :

You are hereby notified, that I have this day revoked the powers of *S. N.*, *T. F.*, and *F. R.*, arbitrators chosen to settle the matters in controversy between us ; and that the following is a copy of such revocation : [Insert the revocation made by one of the parties only.]  
Yours, etc.

(Dated.)

**No. 41.—Award.**

KNOW ALL MEN : That *S. N.*, *T. F.*, and *F. R.*, to whom were submitted, as arbitrators, the matters in controversy existing between *S. D.*, of, etc., and *H. M.*, of, etc., as by their submission

in writing, and bearing date the *first day of May, 1894*, more fully appears: Now, having been first duly sworn according to law, and having heard the proofs and allegations of the parties, and examined the matters in controversy by them submitted, do make this award in writing; that is to say, the said *S. D.* shall make, execute, and deliver to the said *H. M.*, on or before the *fifth day of June*, instant, a good and sufficient assignment of a certain bond and mortgage executed, *etc.*, to the said *S. D.*, *etc.*, and the said *H. M.* shall pay, or cause to be paid, to the said *S. D.* the sum of *one thousand* dollars, immediately upon the execution and delivery of the said assignment; [or, "*the said S. D. shall pay or cause to be paid, to the said H. M. the sum of one hundred dollars, within ten days from the date hereof, in full payment, discharge, and satisfaction of and for all moneys, debts, and demands, due or owing from him, the said S. D., to the said H. M.;*" or, "*the said H. M. shall henceforth forever cease to prosecute a certain suit commenced by him against the said S. D., in the Superior Court of, etc., now pending and undetermined in the said court; and the said S. D. shall pay, or cause to be paid, to the said H. M., on or before the first day of, etc., the sum of one hundred dollars, in full satisfaction of the costs, charges, and expenses incurred by the said S. D. in and about the prosecution of his suit, as aforesaid*"]. And we do further award, adjudge, and decree, that the said *S. D.* and *H. M.* shall, and do, within *ten* days next ensuing the date hereof, seal and execute unto each other, mutual and general releases of all actions, cause and causes of action, suits, controversies, claims, and demands whatsoever, for or by reason of any matter, cause, or thing, from the beginning of the world down to the date of the said submission.

In witness whereof, *etc.*

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## ASSIGNMENT.

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### No. 42.—Assignment Annexed to Instrument.

KNOW ALL MEN BY THESE PRESENTS: That *we, Frederick P. Stone and R. C. Corbaley*, named in the annexed instrument, in consideration of the sum of *one hundred thousand* dollars, gold coin of the *United States*, to us in hand paid by *William Sharon and James G. Fair*, of the *City and County of San Francisco*, and *State of California*, the receipt whereof is hereby acknowledged, do, by these presents, sell, transfer, assign, and set over to the said *Sharon and Fair*, their heirs and assigns, the said instrument, and all our right, title, and interest in and to the same, authorizing them in our names, or otherwise, but at *their own cost, charge, and expense*, to enforce the same according to the tenor thereof,



and to take all legal measures which may be proper or necessary for the complete recovery and enjoyment of the within assigned instrument.

In witness whereof, *etc.*

**No. 43.—Assignment Indorsed upon an Instrument—Short Form.**

FOR VALUE RECEIVED, I do hereby transfer, assign, and set over to *Hall McAllister*, his heirs and assigns forever, all my right, title, and interests, in, to, and under the within instrument.

Witness my hand, *etc.*

**No. 44.—Assignment of Bond.**

KNOW ALL MEN BY THESE PRESENTS: That I, *A. B.*, of, *etc.*, of the first part, for and in consideration of the sum of *one thousand* dollars, gold coin of the United States of America, to me in hand paid by *C. D.*, of, *etc.*, of the second part, the receipt whereof is hereby acknowledged, do by these presents bargain, sell, and assign unto the said party of the second part, his executors, administrators, and assigns, a certain written bond or obligation, and the condition thereof, bearing date the *fifth* day of *May*, one thousand eight hundred and *eighty-one*, executed by one *E. F.*, to me, the said *A. B.*, and all sum and sums of money due, or to grow due, thereon; and I hereby covenant with the said party of the second part, and there is now due on the said bond or obligation, according to the condition thereof, for principal and interest, the sum of *one thousand* dollars, gold coin of the United States of America.

In witness, *etc.*

**No. 45.—Assignment of Partnership Property and Debts by One Partner to Another for a Certain Sum.**

THIS INDENTURE, of two parts, made and concluded this *second* day of *June*, 1894, by and between *George Brown*, of *Oakland*, *Alameda County*, printer, of the first part, and *John Swift*, of the same place, printer, of the second part, witnesseth:

That, whereas, the said parties were lately copartners in the business of printing, which partnership was dissolved and determined on the said second day of June; and whereas, many debts due and owing to the said parties on account of their said copartnership are still outstanding, and debts due by the said firm are yet unpaid; and whereas, it is agreed that the said party of the second part shall assign and release to the said party of the first part all his interest in the stock in trade, goods, and effects belonging to the said firm, and in the debts now owing to the said firm, and that the said party of the first part shall assume all the debts and liabilities of the said firm,

and shall discharge and indemnify the said party of the second part from all liabilities and losses arising from the said partnership:

Now, therefore, in pursuance of the said agreement, and in consideration of the sum of *one hundred dollars*, paid and secured to the said *G. B.*, he, the said *G. B.*, doth hereby fully and absolutely sell, assign, release, and make over to the said *J. S.*, all his right, title, interest, and share in and to all stock in trade, goods, merchandise, machinery, tools, books, leasehold premises, and effects belonging to the said partnership, of whatever kind or nature and wheresoever situated; also, all his right, title, and interest in and to all the debts and sums of money now due and owing to the said firm, whether the same be by bond, bill, note or account, or otherwise; and the said *G. B.* doth hereby make and appoint the said *J. S.*, his executors, administrators, and assigns to be his attorney and attorneys, to receive all and several the debts and sums of money above mentioned to his and their own use and benefit; and doth hereby authorize the said *J. S.*, his executors, *etc.*, to demand, collect, and sue for the said debts and sums of money, and to use his, the said *G. B.*'s, name in any way or manner that the collection, recovery, and realization of the said debts and demands may render necessary, as well in court as out of court, but at their own proper costs and charges, and without cost or damage to the said *G. B.* And the said *G. B.* doth hereby further authorize the said *J. S.* to convey and transfer to his own name, and for his own use and benefit, any and all sums of money and effects, real and personal estate, which may be taken or received in the name of the said firm, and to hold the same free from all claims of the said *G. B.*, his executors, administrators, or assigns.

And these presents further witness, that, in pursuance of the said agreement, the said *J. S.*, for himself, his executors and administrators, doth hereby covenant to and with the said *G. B.*, his executors and administrators, that he the said *J. S.*, and his, *etc.*, shall pay and discharge, and at all times hereafter save harmless and indemnify the said *G. B.*, his, *etc.*, from and against all and every the debts, duties, and liabilities, which, at the dissolution and termination of the said partnership, were due and owing by the said firm to any person or persons for any matter or thing touching the said partnership, and of and from all actions, suits, costs, expenses, and damages for or concerning the said debts, duties, and liabilities, unless the said *G. B.* shall have contracted any debts or incurred any liabilities, in the name and on account of the said firm, which are unknown to the said *J. S.*, and do not appear in the books of the said firm; for which, if any such exists, the said *J. S.* does not hereby intend to make himself responsible.

In testimony whereof, *etc.*, [*as in General Form of Assignment*].

**No. 46.—Assignment of Debt.**

KNOW ALL MEN BY THESE PRESENTS: That I, *A. L.*, of, *etc.*, for and in consideration of the sum of *one hundred* dollars, to me paid by *A. P.*, of, *etc.*, the receipt whereof is hereby acknowledged, have sold, and by these presents do sell, assign, transfer, and set over, unto the said *A. P.*, a certain debt due me from *O. L.*, amounting to the sum of *one hundred* dollars, for goods sold and delivered [*or, work, labor, and services*], with full power to sue for, collect, and discharge, or sell and assign the same. And I hereby covenant, that the said sum of *one hundred* dollars is justly due as aforesaid.

In witness, *etc.*

**No. 47.—Assignment of Contract for Sale of Real Estate.**

KNOW ALL MEN BY THESE PRESENTS: That I, *A. B.*, of, *etc.*, for and in consideration of the sum of *fifty* dollars, gold coin of the United States, to me paid by *C. D.*, of, *etc.*, do, by these presents, sell, transfer, assign, and set over unto the said *C. D.*, a contract for the sale of certain real estate, described as follows, to wit:

[Description.]

which said contract was made and executed by *E. F.*, of, *etc.*, to the said *A. B.*, and bears date the *sixth* day of *May*, *1894*, to have and to hold the same unto the said *C. D.*, his heirs, executors, administrators, and assigns; subject, nevertheless, to the covenants, conditions, and payments therein mentioned. And I hereby fully authorize and empower the said *C. D.*, upon his performance of the said covenants and conditions, to demand and receive of the said *E. F.* the deed covenanted to be given in the said contract, in the same manner, to all intents and purposes, as I myself might or could do, were these presents not executed.

In witness, *etc.*

**No. 48.—Assignment of Copyright.**

THIS INDENTURE, made this *twenty-third* day of *April*, *1895*, between *Charles Russell*, of *Brooklyn*, State of *New York*, of the first part, and *George Arnold*, of the *City and State of New York*, of the second part.

Whereas, the said *Charles Russell* has written and composed a book, entitled "*The Law of the Farm*";

Now this indenture witnesseth, that the said *Charles Russell*, for and in consideration of the sum of *five hundred* dollars, to him in hand paid by said *George Arnold*, the receipt of which is hereby acknowledged, does by these presents, bargain, sell, and assign unto the said *George Arnold*, his heirs, executors, administrators, and assigns, all the said book, and the manuscript



thereof, and all his right, title, and interest, property, claim, and demand, of every kind and nature whatsoever, of, in, and to the same, and in any and all copyrights, and any and all renewals thereof, which may or can be had, or secured, or taken, in respect to said book or manuscript, under and by virtue of any acts of Congress, with any and all profit, benefit, and advantage that shall or may arise by or from printing, publishing or vending the same during the original and renewed terms of any such copyright. To have and to hold the same to the said *George Arnold*, his heirs, executors, administrators, and assigns forever.

And the said *Charles Russell* agrees to examine and correct the proof-sheets of said work as fast as they shall be furnished, and to make and complete a full and correct index therefor, immediately after all the signatures of the text shall be furnished for that purpose.

And the said *George Arnold*, for himself, his heirs, executors, administrators, and assigns, covenants and agrees to furnish and deliver, free of cost, to said *Charles Russell*, *twenty-five* bound copies of said work, within *three months* after the said index shall be completed.

In witness whereof, *etc.*

#### No. 49.—Assignment of Bond and Mortgage.

THIS INDENTURE, *etc.*, [as in the forms preceding, then add:] But this indenture [or this assignment] is nevertheless made upon this express condition, that if the said *A. B.*, his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, unto the said *A. L.*, his heirs, executors, administrators, or assigns, the sum of *one thousand* dollars, on or before the *seventh* day of *June, 1894*, with legal interest from the date hereof, this indenture [or, this assignment] shall be void and of no effect; it being made for the purpose of securing the payment of the said sum of *one thousand* dollars, with interest, as aforesaid, and for no other purpose whatever. And in case the said *A. L.*, his heirs, executors, administrators, or assigns, shall collect and receive the money due on said mortgage hereby assigned, he or they shall, after retaining the sum of *one thousand* dollars, with the interest thereon, and his or their reasonable costs and charges in that behalf expended, pay the surplus, if any there be, to the said *A. B.*, his heirs, executors, administrators, or assigns.

In witness whereof, *etc.*

#### No. 50.—Assignment of Seaman's Wages.

KNOW ALL MEN: That I, *A. C.*, for and in consideration of the sum of five dollars, in which I am justly indebted to *C. C.*, of, *etc.*, have hereby assigned, sold, and set over, and by these

presents I do hereby assign, sell, and set over, unto the said C. C., all sums of money as are now due and owing to me, the said A. C., for wages or services on board the ship or vessel called the C. L., from the master or owner of said vessel, on board of which vessel I served as a mariner on her voyage from O. to P., which has recently terminated, with full power to prosecute the said vessel, her tackle, apparel and furniture, freight, cargo, and any and all persons liable therefor, and receive and recover the same, and give discharges therefor.

[Add covenants that A. B. has not released, and that he will give further assurances.]

In witness whereof, *etc.*

**No. 51.—Assignment by an Insolvent Debtor.**

THIS INDENTURE, made the *sixth* day of *May*, eighteen hundred and *ninety-five*, by and between B. C., of M., merchant, of the first part, J. S., of O., of the second part, and the several persons creditors of the said party of the first part, of the third part, witnesseth:

That whereas, the party of the first part is indebted to divers persons in considerable sums of money, which he is at present unable to pay in full, and he is desirous to convey all his property for the benefit of all his creditors, without any preference or priority other than that provided by law.

Now, the party of the first part, in consideration of the premises, and of one dollar paid to him by the party of the second part, hereby grants, bargains, sells, assigns, and conveys unto the party of the second part, and his heirs and assigns, all his lands, tenements, hereditaments, goods, chattels, property, and choses in action, of every name and nature and description, wheresoever the same may be, except such property only as is exempted by law from attachment and execution, as fully described and set forth in the schedule hereto annexed and made a part of this assignment.

To have and to hold the said premises unto the said party of the second part, and his heirs and assigns:

But in trust and confidence nevertheless to sell and dispose of the said real and personal estate, and to collect the said choses in action, using a reasonable discretion as to the times and modes of selling and disposing of said estate, as it respects making sales for cash or on credit, at public auction or by private contract, and with the right to compound for the said choses in action, taking a part for the whole, where the trustee shall deem it expedient so to do; then in trust to dispose of the proceeds of the said property in the manner following, viz:

1st. To pay all such debts as by the laws of the United States or of this State are entitled to a preference in such cases.

2d. To pay the costs and charges of these presents, and the expenses of executing the trusts declared in these presents.



3d. To distribute and pay the remainder of the said proceeds to and among all the parties of the third part, ratably, in proportion to their respective debts. And, if there should be any surplus, after paying all the parties of the third part in full, then in trust.

4th. To pay over such surplus to the party of the first part, his executors, administrators or assigns.

And the party of the first part hereby constitutes and appoints the party of the second part his attorney irrevocable, with power of substitution, authorizing him, in the name of the party of the first part or otherwise, as the case may require, to do any and all acts, matters, and things, to carry into effect the true intent and meaning of these presents, which the party of the first part might do if personally present.

And the party of the second part, hereby accepting these trusts, covenants to and with each of the other parties hereto, to execute the same faithfully.

And the party of the first part hereby covenants with the said trustee, from time to time, and at all times when requested, to give him all the information in his power respecting the assigned property, and to execute and deliver all such instruments of further assurance as the party of the second part shall be advised by counsel learned in the law to be necessary, in order to carry into full effect the true intent and meaning of these presents.

In witners whereof, etc.

#### No. 52.—Assignment of Judgment.

KNOW ALL MEN BY THESE PRESENTS: That *George H. Kellogg, of Redwood City, County of San Mateo*, the party of the first part, in consideration of the sum of *two thousand five hundred* dollars, gold coin of the United States of America, to him in hand paid, by *Charles Livingston, of Redwood City, in said County, State of California*, the party of the second part, the receipt whereof is hereby acknowledged, has sold and assigned unto the said party of the second part, and his assigns, a certain judgment, recovered by the said party of the first part, on the *ninth* day of *August*, in the year of our Lord one thousand eight hundred and *eighty-one*, in the Superior Court of the said *County of San Mateo, State of California*, against *S. S. Snyder and Aaron Jones*, for the sum of *three thousand two hundred* dollars, gold coin of the United States of America, and *sixty-seven dollars and fifty cents*, cost of suit, and all sums of money that may be had or obtained by means of said judgment, or on any proceedings to be had thereupon. And the said party of the first part does hereby appoint the said party of the second part, and his assigns, his true and lawful attorney irrevocable, with power of substitution and revocation, for the use and at the proper costs and charges of the said party of the second part, to demand and receive the said money, and to take out executions, and take in my name, or otherwise, all lawful ways and means for the recovery of the money due or



to become due on the said judgment; and on payment to acknowledge satisfaction or discharge the same. And the said party of the first part does covenant, that he will not collect or receive the same, or any part thereof, nor release or discharge the said judgment, but will allow all lawful proceedings therein, the said party of the second part saving the said party of the first part harmless of and from any costs in the premises.

In witness whereof, *etc.*

**No. 53.—Assignment of Judgment—Another Form.**

In the Superior Court of the County of *Sacramento*, State of *California*.

In consideration of *fifty* dollars, gold coin of the United States, to me paid, I do hereby sell, assign, and transfer to *C. D.* the judgment above mentioned, for his use and benefit; hereby authorizing him to collect and enforce payment thereof, in my name or otherwise, but at his own costs and charges.

In witness, *etc.*

**No. 54.—Assignment by Debtor to Sheriff for Benefit of Creditors.**

THIS INDENTURE, made this *third* day of *October*, in the year of our Lord one thousand eight hundred and ninety-four, by and between *Henry Smith*, of the *City and County of San Francisco*, State of *California*, and *J. J. McDade*, as Sheriff of the *City and County of San Francisco*, State of *California*, witnesseth:

That whereas, the said *Henry Smith* is at present unable to pay his debts from his own means, as they become due, and he is insolvent and is desirous of availing himself of the provisions of Division IV., Title III., Part II., of the Civil Code of the State of *California*:

Now, therefore, in consideration of the premises, and in accordance with the law in such cases made and provided, the said *Henry Smith* does hereby grant, transfer, assign and set over unto the said Sheriff, his successors or assigns, all and singular the *real and personal property* of every kind and description, and wheresoever situated, of which he is the owner or possessed of, or entitled to the possession of or interested in, in any manner.

To have and to hold the same for the satisfaction of his creditors, in accordance with the provisions of the law in such cases made and provided.

The following is a list of the names of the creditors of said *Henry Smith*, with their places of residence, and the amounts of their respective demands:

NAMES.	PLACE OF RESIDENCE.	AMOUNT.
<i>William Johns,</i>	<i>Fresno, Fresno County, Cal.</i>	<i>\$ 3,172 63</i>
<i>Thomas E. Hughes,</i>	" " "	<i>10,821 13</i>

In witness whereof, *etc.*, and acknowledged.

**NOTE 1.**—Departing from a general rule to omit all reference to the laws of California, except to the sections of the statutes or code, a summary of the law of assignments for the benefit of creditors will be inserted. The subject is of great importance to the merchant as well as the lawyer—the lawyer, to be advised as to the law of other places than his residence (he not, as is usual, having the statutes of all neighboring States at hand); the merchant, that he may be enabled to regulate his correspondence when it is not convenient to take legal advice.

In California, a debtor is insolvent when he is unable to pay his debts from his own means as they become due. (Civil Code, sec. 3450.) He may make assignment for the benefit of creditors. He must give a list of his creditors, their residence and claims. The assignment is to the Sheriff of the county of his residence, if he resides in the State. If he resides out of the State, then to the Sheriff of the county where the property assigned, or some of it, is situated. The Sheriff then takes possession of the property. As soon as the assignment is made the Sheriff must, by mail, notify the creditors named to meet at his office on a day and hour not less than eight nor more than ten days from the date of the delivery of the assignment to him, to elect one or more assignees, as they may elect in the place of the Sheriff. The object of this part of the law is to make the time for the creditors to choose an assignee as short as possible, so that the local creditors at the county seat (where the Sheriff resides) may be manipulated and stimulated by the Sheriff and his attorney, to continue him (the Sheriff) as assignee, in preference to creditors (foreign to the Sheriff's residence) who might themselves desire a voice in the selection. The notice so mailed must describe the amount of the creditor's demand as it appears in the assignment. At the creditors' meeting the Sheriff presides, and a majority in amount of demands controls. Proxies are allowed, but they must be acknowledged. Any number of assignees may be elected, and when elected the Sheriff shall assign to them all he took under the debtor's assignment. Before making assignment, the Sheriff shall be paid the same fees he would have been entitled to, *provided*, instead of under the assignment, he had taken the property of the debtor under attachment. The practical working of the provision is that in the large cities, at the first meeting of creditors a motion is made to adjourn, and it is adjourned from day to day, so that the Sheriff's fees, including keeper's and attorney's charges, make such a hole in the estate that the creditors often vote the Sheriff in as permanent assignee, rather than risk a change and a second payment of the same fees to a new lot of officers.

A person residing in another State cannot make an assignment of his property in this State, except as is by the California Statutes provided; but a person may, notwithstanding the statute, assign all his property in this State for the benefit of any one or more creditors.

Assignments may provide for the payment of a subsisting liability of the creditor, whether absolute or contingent.

An assignment is void against a creditor not consenting, when a preference is given of one class of debts over another;

If it tends to coerce a creditor;

If it provides for the payment of a false or fraudulent claim, or for the payment of more than is due;

If it reserves to the assignor any interest in the assigned property before all his debts are paid;

If it confers on the assignee any power, which if exercised might delay the immediate conversion of the assigned property for the purposes of the trust.

An assignment must be in writing, subscribed by the assignor or by his agent, authorized in writing, and the transfer by the Sheriff must be in writing, signed by him in his official capacity. It must be acknowledged, etc, the same as transfers of land, and recorded the same; and, unless the law is complied with, all assignments are void as to all creditors who do not assent.

Within twenty days after assignment the assignor must make and file an inventory, showing all his creditors, their residences, the sum due each and its nature, the true consideration of each liability, and the place where it arose, every judgment and security for each debt, all the assignor's property exempt from execution, and all his other property of every kind and description, and where situated, and the value, to his best knowledge.

The assignor must make and file an affidavit, and annex it to his inventory, that the same is true. If the affidavit or inventory is not filed by the assignor, the proceedings for that reason are not invalidated, but the assignee must, within twenty days, file an inventory of the property received by him, and the assignor may be cited before the Court to be examined as to all his transactions; and the Court may make any order necessary to carry out the provisions of the statute.

The assignment must be recorded, and if not it is void as against creditors in good faith, and unless the inventory is filed within the time as aforesaid.

When the Sheriff is assignee, his official bond is sufficient, but other assignees must give a bond to the State, the amount to be fixed by the Court, within forty days from appointment. The bond is to be filed the same as other bonds, and a failure to give it forfeits the appointment, and a creditor may petition the Court to have him removed. When so removed his successor is appointed by the Court as permanent assignee. The practical working of this clause is that if the Judge desires the Sheriff or other person other than the elected assignee to act as assignee of a large estate he fixes the elected assignee's bond at a high figure. It is not given. He is removed. The Judge appoints the man of his choice, and because the record shows that a large bond can not be given the amount is greatly reduced and the Court's appointee takes charge of the estate. In practical California politics, the assignees of large estates and their counsel can always be relied on to appear in conventions and urge their patron's claims to higher judicial honors. The assignee is allowed the same fees and commissions that assignees in insolvency matters are allowed, and "*all necessary expenses*" in



the management of the estate. In a case in San Francisco, a Judge in a probate matter allowed \$80,000 attorney's fee under a similar power; a prior fee of \$100,000 having been allowed to another attorney in the same estate.

Until the assignee qualifies and the inventory has been filed, he has no authority to dispose of the property of the estate, except he may dispose of perishable property. Within ten days after filing his bond he must publish a notice to creditors to present claims under oath, and within ten days from the first publication shall mail a copy of such notice to each creditor. The notice is filed in Court, and then, after thirty days, the assignee commences to pay dividends as fast as funds are received.

After six months from his appointment the assignee may be ordered by the Court to file an account of his proceedings.

Life insurance and property exempt from execution do not pass to the assignee unless the assignor so elects.

If an assignment is declared void, the assignee is not responsible for his acts as assignee done in good faith.

After an assignment has been executed and recorded, it cannot be altered in any respect without the consent of the assignor and every creditor affected thereby.

NOTE 2.—In Nevada there is no statute providing for an assignment for the benefit of creditors. There is a law for the relief of insolvent debtors who owe an amount exceeding five hundred dollars. See under the head "Insolvency." In Nevada, if a debtor does not take the benefit of the insolvency laws, he may make an assignment to any person he may select, for the benefit of one or more, or all, of his creditors. Under such assignment he is not discharged from his debts. Gen. Stats., sec. 3845.

The following form, No. 55, will be sufficient in all places where special statutory regulations to the contrary are not made.

### No. 55.—Assignment for Benefit of Creditors.

THIS INDENTURE, made the *second* day of *May*, eighteen hundred and *ninety-five*, by and between *L. M.*, of *D.*, merchant, of the first part, *P. C.*, of *A.*, of the second part, and the several persons, creditors of the said party of the first part, who have executed, or shall hereafter execute, or accede, to these presents, of the third part, witnesseth:

That whereas, the party of the first part is indebted to divers persons in considerable sums of money, which he is at present unable to pay in full, and he is desirous to convey all his property for the benefit of all his creditors, without any preference or priority other than that provided by law:

Now, the party of the first part, in consideration of the premises, and of one dollar paid to him by the party of the second part, hereby grants, bargains, sells, assigns, and conveys unto the party of the second part, and his heirs and assigns, all his lands, tenements, hereditaments, goods, chattels, property, and choses in action, of every name, nature, and description, where-soever the same may be, except such property only as is exempted by law from attachment.

To have and to hold the said premises unto the said party of the second part, and his heirs and assigns.

But in trust and confidence, nevertheless, to sell and dispose of the said real and personal estate, and to collect the said choses in action, using a reasonable discretion as to the times and modes of selling and disposing of said estate, as it respects making sales for cash or credit, at public auction or by private contract, and with the right to compound for the said choses in action, taking a part for the whole, where the trustee shall deem it expedient so to do; then in trust to dispose of the proceeds of the said property in the manner provided by law.



To distribute and pay the remainder of the said proceeds to and among all the parties of the third part, ratably, in proportion to their respective debts [or, *if there is a statute regulating the distribution, say:*] according to the true intent and meaning of an act, entitled "An Act," etc.

And if there should be any surplus, after paying all the parties of the second part in full, then in trust.

To pay over such surplus to the person who is entitled thereto.

And the party of the first part hereby constitutes and appoints the party of the second part his attorney irrevocable, with power of substitution, authorizing him, in the name of the party of the first part, or otherwise, as the case may require, to do any and all acts, matters, and things, to carry into effect the true intent and meaning of these presents, which the party of the first part might do if personally present.

And the party of the second part, hereby accepting these trusts, covenants to and with each of the other parties hereto to execute the same faithfully.

And the party of the first part hereby covenants with the said trustee, from time to time, and at all times when requested, to give him all the information in his power respecting the assigned property, and to execute and deliver all such instruments of further assurance as the party of the second part shall be advised by counsel learned in the law to be necessary, in order to carry into full effect the true intent and meaning of these presents.

And the parties of the third part, by signing and sealing these presents, express their assent to this assignment, and accept the provision for them made herein, pursuant to the statute aforesaid.

In testimony whereof, etc., [*as in General Form of Assignment*].

NOTE 1.—In Idaho the same as in Nevada (which see in Notes to Form No. 54). See *Insolvency, post*, Rev. Stats., sec. 5882.

NOTE 2.—In Montana the same as in Nevada. There are no statutory regulations about it.

NOTE 3.—In Utah the same as in Nevada. No statute about it.

NOTE 4.—In North and South Dakota, the same as in California, except the assignment is not made to the Sheriff, but is made to one or more of his creditors, the same as in Nevada. The same form used in Nevada will be good here. In these States no provision is made for the discharge of an insolvent from his debt, but the same result is usually reached by an honest assignment and an agreement with the creditors. In such case those who sign release their demands. Those who do not sign are not affected. See *Comp. Laws*, sec. 4660 *et seq.*

NOTE 5.—In Wyoming the same as in Dakota, except the assignment is recorded in the Probate Court. The inventory must be filed within twenty days after the assignment. The assignee must file a bond within thirty days. The Sheriff serves all notices. If a creditor receives a dividend under the assignment, he thereby consents to the discharge of his whole debt as to any property thereafter acquired by the assignor. Rev. Stats., secs. 92-118.

NOTE 6.—In Washington there is no statute relating to such assignments, therefore the form given under Note 2 (Nevada) will answer. See *Insolvency*.

NOTE 7.—In Oregon an assignment cannot be made, except for the benefit of all the creditors in proportion to the amount of their respective claims. When made it discharges all attachments on which judgments have not been taken. If judgment is taken, then the judgment creditor is considered a creditor the same as if his claim had been regularly presented and allowed by the assignee.

The assignment is made to one or more persons. Up to this point the proceedings are substantially the same as in California. Then, upon the application of two or more creditors, the Court having jurisdiction of the proceedings, may call a meeting of

creditors to elect other assignees than those to whom the assignment was made. Notice is given to the creditors to meet within fifteen days and make a choice. In other respects, the proceedings are similar to the California practice, except if the proceedings show that the assignor has in all things acted in good faith and that his assets will pay his creditors fifty cents on the dollar, he will, by order of the Court, be discharged from all his debts; otherwise, not. Hill's Laws, secs. 3178-3187.

NOTE 8.—In Colorado the assignment must be for the benefit of all the creditors, the same as in Oregon. Notice is given the same as in California. The assignee appointed by the debtor cannot be removed if he faithfully performs his duty. In other respects, the proceedings are similar to California. The assignor is not discharged from his debts by reason of his assignment. Hill's Stats., secs. 109-194, and Stats. 1893, p. 95.

NOTE 9.—In Arizona the proceedings are similar to assignments in California, except the Sheriff is not assignee. Rev. Stats., secs. 22-39.

### No. 56.—Assignment—General.

KNOW ALL MEN: That for the consideration of *one dollar* to me in hand paid, and for other valuable considerations, I hereby assign to *Henry Smith* all the personal property I own or am interested in at this date in the State of California.

(Dated and signed.)

### No. 57.—Assignment by Sheriff—Benefit of Creditors—California.

THIS INDENTURE, made this *tenth* day of *December*, in the year of our Lord one thousand eight hundred and *ninety-four*, by and between *J. J. McDade*, Sheriff of the *City and County of San Francisco*, State of California, as such Sheriff, and assignee of *Henry Smith*, an insolvent debtor, and *W. B. Lake*, witnesseth:

That whereas, on the *third* day of *October*, 1894, in pursuance of the provisions of Division IV., Title III., Part II., of the Civil Code of California, did assign to said Sheriff his property for the benefit of his creditors, which assignment was in writing, and was duly recorded in the office of the County Recorder of said city and county, on the *third* day of *October*, 1894.

And whereas, the said Sheriff did thereupon cause a notice of a meeting to the creditors of said *Henry Smith* to be sent by mail to each creditor named, and to the address given in said assignment, and which notice specified the amount owing to such creditor, as set forth in said assignment, and notified them to meet at his office in said city and county, State of California, on *Monday*, the *first* day of *October*, 1894, at *10 o'clock A. M.* of that day, for the purpose of electing an assignee or assignees in his place and stead, as assignee of the property of said *Henry Smith*.

And whereas, said Sheriff did cause a notice of said meeting of creditors to be published for *ten* times in the *Weekly Star*, a newspaper published in said *City and County of San Francisco*, which city and county was and is the place and residence of said *Henry Smith*.

And whereas, at a meeting of the creditors of said *Henry Smith*, held in pursuance of the aforesaid notices, which were given and published as required by law in such cases made and provided, the said *W. B. Lake*, by a majority in amount of the demands against the said *Henry Smith* present and represented



by proxy, was duly elected assignee in accordance with the aforesaid provisions of said Civil Code.

Now, therefore, in consideration of the premises, and in pursuance of the law in such cases made and provided, I, *J. J. McDade*, Sheriff as aforesaid, do, as such Sheriff, hereby convey, assign, and set over to the said *W. B. Lake*, as such assignee, and to his successors and assigns, upon the trusts provided in said Title, all and singular the property of every kind and description, so as aforesaid assigned to me by the said *Henry Smith*.

In witness whereof, I have hereunto set my hand and seal this 10th day of December, 1894.

*J. J. McDADE,*

Sheriff of the City and County of San Francisco,  
State of California.

Cal. Civil Code, Div. 4, Title 3, Part 2, sec. 3499, *et seq.*

### No. 58.—Assignment of Stock.

For and in consideration of the sum of *ten thousand dollars* to me in hand paid, I hereby assign and sell to *A. H.* three shares of stock of the "*Equitable Mining Association*," of the denomination of *one thousand dollars each*, and being shares numbered respectively, 27, 28, and 29, and now standing in my name on the books of said company. And I do guarantee, that all assessments to date are paid upon said shares and each of them, and I authorize the secretary, or other proper officer of said company, to enter this transfer upon the books of said company, showing that I have this day transferred to said *A. H.* the said three shares of stock of the numbers and designation above mentioned.

(Dated.)

### No. 59.—Assignment of Account Indorsed Thereon.

In consideration of *one dollar*, value received, I hereby sell and assign to *F. O.* the within account, which is justly due from the within named *H. A.*, and I hereby authorize the said *F. O.* to collect the same.

In witness, *etc.*

### No. 60.—Assignment of Policy of Insurance.

KNOW ALL MEN BY THESE PRESENTS: That I, *P. L.*, of, *etc.*, in the annexed policy named, for and in consideration of the sum of *one hundred dollars* to me in hand paid by *P. C.*, of, *etc.*, the receipt whereof is hereby acknowledged, have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over, unto the said *P. C.* the annexed policy of insurance, and all sum and sums of money, interest, benefit, and advantage whatsoever, now due or hereafter to arise, or to be had



or made by virtue thereof; to have and to hold the same unto the said *P. C.* and assigns forever.

In witness, *etc.*

The above assignment is approved.

### No. 61.—Assignment of Policy as Security.

KNOW ALL MEN, *etc.* [as in the foregoing to the end, and then add:] upon the condition, however, that if a certain promissory note for the sum of *one thousand dollars*, bearing date the *seventh day of August*, given by the said *P. L.* to the said *P. C.*, is well and truly paid, according to the terms thereof, then this assignment is to be void.

In witness whereof, *etc.* [adding the approval in the foregoing if necessary].

### No. 62.—Assignment of Lease.

KNOW ALL MEN BY THESE PRESENTS: That I, *Benjamin F. Ruggles*, of the Town of *Red Bluff*, County of *Tehama*, and State of *California*, for and in consideration of the sum of *eight hundred and fifty-nine dollars and fifty cents*, gold coin of the United States of America, to me in hand paid by *James Harloe*, of the said Town and County of *Tehama*, and State aforesaid, do by these presents sell, convey, assign, transfer, and set over unto the said *James Harloe*, a certain indenture of lease, bearing date the *fifteenth day of August*, one thousand eight hundred and *ninety-four*, made by *O. C. Pratt*, of the City and County of *San Francisco*, and State aforesaid, to me, the said *Benjamin F. Ruggles*, of a certain dwelling-house and lot, situate, lying, and being in the said Town of *Red Bluff*, County of *Tehama*, bounded and described as follows, to wit:

[Description.]

for the term of *four years and six months*, reserving unto the said *O. C. Pratt* the *monthly rent of thirty-seven dollars and fifty cents*, payable *monthly, on the fifteenth day of each month, in advance*, with all and singular the premises therein mentioned and described, and the buildings thereon, together with the appurtenances.

To have and to hold the same unto the said *James Harloe*, his heirs, executors, administrators, and assigns, from the *fifteenth day of November*, one thousand eight hundred and *eighty-one*, for and during all the remainder yet to come of the said term of *four years and six months*, mentioned in said indenture of lease. And I do hereby covenant and agree to and with the said *James Harloe*, that the said assigned premises now are free and clear of and from all former and other gifts, grants, bargains, sales, leases, judgments, executions, back rents, taxes, assessments, and incumbrances, by me suffered, made, or created.

In witness, *etc.*

**No. 63.—Assignment of Lease by Indorsement.**

FOR VALUE RECEIVED, I do by these presents bargain, sell, assign, and set over unto the said *C. D.*, his heirs and assigns, the within written indenture of lease, and all my estate, right, title, interest, claim, property, and demand of, in, and to the lands, tenements, hereditaments, and premises therein mentioned, which I now have, by means of the said indenture, or otherwise; subject, nevertheless, to the rents and covenants in the said indenture contained.

In witness, *etc.*

**No. 64.—Assignment of Mortgage.**

KNOW ALL MEN BY THESE PRESENTS: That *Jackson Hart*, of the Town of *Colusa*, County of *Colusa*, State of *California*, the party of the first part, for and in consideration of the sum of *one thousand five hundred* dollars, *lawful money* of the United States of America, to him in hand paid by *H. W. Dunlap*, of *Grand Island*, county aforesaid, the party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, assign, transfer, and set over, unto the said party of the second part, a certain indenture of mortgage bearing date the *nineteenth* day of *May*, one thousand eight hundred and *ninety-four*, made and executed by *John Smith and Jane Smith*, his wife, to the said party of the first part, and recorded in the office of the County Recorder of the said County of *Colusa*, State of *California*, in *Liber 3* of *Mortgages*, page *279*, on the said *nineteenth* day of *May*, 1894, at ten (10) minutes past 3 o'clock P. M.

Together with the *promissory note* therein described, and the money due and to grow due thereon, with the interest.

And the said party of the first part does hereby make, constitute, and appoint the said party of the second part his true and lawful attorney, irrevocable, in his name or otherwise, but at the proper costs and charges of the said party of the second part, to have, use, and take all lawful ways and means for the recovery of the said money and interest; and in case of payment to discharge the same as fully as the said party of the first part might or could do if these presents were not made.

In witness whereof, *etc.*

**No. 65.—Assignment of Mortgage—Another Form.**

KNOW ALL MEN BY THESE PRESENTS: That *James M. Short*, of *Eureka*, County of *Humboldt*, State of *California*, the party of the first part, for and in consideration of the sum of *five hundred and fifty-six* dollars, *lawful money* of the United States of America, to him in hand paid by *G. W. Tompkins*, of said Town of *Eureka*, State and County aforesaid, the party of the second part, the receipt of which is hereby acknowledged, has granted,

bargained, sold, assigned, transferred, and set over, and by these presents does grant, bargain, sell, assign, transfer, and set over, unto the said party of the second part, a certain indenture of mortgage, bearing date the *nineteenth* day of *May*, one thousand eight hundred and *ninety-four*, made and executed by *John Brown*, of said *Town of Eureka*, to the said party of the first part, to secure the payment of the sum of *five hundred and sixty-three dollars and ninety cents, gold coin of the United States*, together with the *promissory note* or obligation therein described, and the money due, or to grow due thereon, with the interest; which said indenture of mortgage was recorded in the office of the County Recorder of the said County of *Humboldt*, State of *California*, in Book 16 of Mortgages, page 196, on the *twenty-first* day of *May*, 1894.

[Here insert Assignment, if any.]

To have and to hold the same unto the said party of the second part, his executors, administrators, and assigns, for his or their use and benefit; subject only to the proviso in the said indenture of mortgage mentioned. And the said party of the first part does hereby make, constitute, and appoint the said party of the second part his true and lawful attorney, irrevocable, in his name or otherwise, but at the proper costs and charges of the said party of the second part, to have, use, and take all lawful ways and means for the recovery of the said money and interest; and in case of payment to discharge the same as fully as the said party of the first part might or could do if these presents were not made.

And the said party of the first part does hereby covenant to and with the said party of the second part, that the said party of the first part is the lawful owner and holder of the said *promissory note* and mortgage, and that he has good right to sell, transfer, and assign the same as aforesaid, and that there is now due and owing upon the said *promissory note* and mortgage, *in gold coin of the United States*, the sum of *six hundred and seven dollars and eighty-four cents*, with interest from the *nineteenth* day of *October*, one thousand eight hundred and *ninety-four*.

In witness whereof, *etc.*

#### No. 66—The Same, Indorsed on Mortgage.

For value received, I do hereby sell, assign, transfer, and set over, unto *J. W. Park*, the within indenture of mortgage, together with the note accompanying the same.

Witness my hand and seal, *etc.*



## BILLS OF EXCHANGE—CHECKS.

## No. 67.—Bill of Exchange.

\$10,000.

San Francisco, July 10, 1894.

Ten days after sight, pay to the order of J. B. & Co., ten thousand dollars, and charge the same to account of

A. L. B. &amp; Co.

To Messrs. Smith &amp; Co., New York.

## No. 68.—A Set of Bills of Exchange.

A. Ex. for \$10,000.

W. F. &amp; Co., Banking Office.

San Francisco, Cal., July 10, 1894.

At sight of this first of exchange (*second and third unpaid*), pay to the order of A. L. B. & Co., ten thousand dollars.

Value received, and charge the same to account of

W. F. &amp; Co.

To Messrs. Smith &amp; Co., Bankers, New York.

B. Ex. for \$10,000

W. F. &amp; Co., Banking Office.

San Francisco, Cal., July 10, 1894.

At sight of this second of exchange (*first and third unpaid*), pay to the order of A. L. B. & Co., ten thousand dollars.

Value received, and charge the same to account of

W. F. &amp; Co.

To Messrs. Smith &amp; Co., Bankers, New York.

C. Ex. for \$10,000.

W. F. &amp; Co., Banking Office.

San Francisco, Cal., July 10, 1894.

At sight of this third of exchange (*first and second unpaid*), pay to the order of A. L. B. & Co., ten thousand dollars.

Value received, and charge the same to account of

W. F. &amp; Co.

To Messrs. Smith &amp; Co., Bankers, New York.

## No. 69.—Bank Check.

San Francisco, May 8, 1894.

W. F. & Co., pay to J. B., or order, five thousand dollars (\$5,000).

A. L.

## No. 70.—Bank-Draft or Check.

Dated May 30, 1894.

Drawn by Flint, Peabody &amp; Co.

Drawn upon Wm. Sharon.

Order of A. L. Bancroft &amp; Co.

Time thirty days.

Due June 29, 1894.

Amount \$1,000.

No. 174.

\$1,000.

San Francisco, May 30, 1894.

Thirty (30) days after date Pay to the Order of A. L. Bancroft & Co., in United States Gold Coin, one thousand (1,000) dollars. Value Received, and charge the same to account of To Wm. Sharon. FLINT, PEABODY & CO.

No. 174.

## BILL OF SALE.

## No. 71.—Bill of Sale.

KNOW ALL MEN BY THESE PRESENTS: That *I, George W. Bird, of Monterey, County of Monterey, State of California*, the party of the first part, for and in consideration of the sum of *ten hundred and fifty-seven dollars, gold coin* of the United States of America, to me in hand paid by *William H. Lyons, of the same place*, the party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, and convey unto the said party of the second part, his executors, administrators, and assigns, *the undivided one-half of one hundred acres of barley, now growing on my ranch near the said Town of Monterey, in said County of Monterey; also one roan horse, about sixteen hands high, having a white spot on the face and one white foot, and the letter "B" branded on the left shoulder; also, eight hundred sheep now in my possession, on my place aforesaid, marked one slit in right ear and crop off the left ear.*

To have and to hold the same to the said party of the second part, his executors, administrators, and assigns forever. And I do for myself, my heirs, executors, and administrators, covenant and agree to and with the said party of the second part, his executors, administrators, and assigns, to warrant and defend the sale of the said property, goods, and chattels hereby made unto the said party of the second part, his executors, administrators, and assigns, against all and every person and persons, whomsoever, lawfully claiming or to claim the same.

In witness whereof, *etc.*

## No. 72.—Bill of Sale—Simple Form.

In consideration of *two hundred and fifty dollars*, to me in hand paid by *Bruno Bernal*, I do hereby sell and deliver to him my bronco horse, *Henry Ward Beecher*, branded *Theodore T.* on the left hip.

(Date.)

## No. 73.—Bill of Sale—Another Form.

Received of *John Pike*, *one thousand dollars, gold coin* of the United States, in payment of *five thousand fruit trees* I have sold and delivered to him, this *fourth day of May, 1894.*

## BOND.

## No. 74.—Official Bond.

KNOW ALL MEN BY THESE PRESENTS: That we, *S. S. Merrill*, as principal, and *F. D. Atherton, Geo. H. Kellogg, John T. Doyle, R.*

*S. Eaton, S. M. Menzes, and Ben. G. Lathrop*, as sureties, are held and firmly bound unto the *State of California* in the following penal sums, to wit: The said principal in the penal sum of *fifty thousand* dollars, and the said sureties in the following penal sums, to wit: *the said F. D. Atherton* in the penal sum of *ten thousand (10,000)* dollars; *the said Geo. H. Kellogg* in the penal sum of *five thousand (5000)* dollars; *the said John T. Doyle* in the penal sum of *five thousand (5000)* dollars; *the said R. S. Eaton* in the penal sum of *ten thousand (10,000)* dollars; *the said S. M. Menzes* in the penal sum of *ten thousand (10,000)* dollars; *the said Ben. G. Lathrop* in the penal sum of *ten thousand (10,000)* dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this *fourth* day of *February, 1895*.

The condition of the above obligation is such, that, whereas the above bound principal, *S. S. Merrill*, was, at a *general* election held in this *State* on the *tenth* day of *September, 1894*, duly elected to the office of *County Treasurer*, in and for *San Mateo* County and *State* aforesaid.

Now, therefore, the condition of this obligation is such, that if the said *S. S. Merrill* shall well, truly, and faithfully perform all official duties now required of him by law, and shall well, truly, and faithfully execute and perform all the duties of such office of *County Treasurer* required by any law to be enacted subsequently to the execution of this bond, then this obligation is to be void and of no effect; otherwise, to remain in full force and effect.

(Signed, sealed, and delivered.)

STATE OF *California*,  
County of *San Mateo*. } ss.

*F. D. Atherton, Geo. H. Kellogg, John T. Doyle, R. S. Eaton, S. M. Menzes, and B. G. Lathrop*, whose names are subscribed as sureties to the within bond, being severally duly sworn, each for himself, deposes and says that he is a resident and freeholder and householder in said *San Mateo* County; that he is worth the amount for which he becomes surety on said bond, over and above all debts and liabilities, in unencumbered property, situated within this *State*, exclusive of property exempt from execution and forced sale.

(Subscribed and sworn to.)

#### NO. 75.—Bond for Deed.

KNOW ALL MEN BY THESE PRESENTS: That we, *J. N. Webster*, as principal, and *John A. Mars and Wm. Patterson*, as sureties, all of the *City and County of San Francisco*, are held and firmly bound unto *Wm. Sharon*, of the same place, in the sum of *ten thousand five hundred* dollars, gold coin of the United States of America, to be paid to the said *Wm. Sharon*, his executors, administrators or



assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, *jointly and severally*, firmly by these presents. Sealed with our seals and dated the *twentieth* day of *December*, one thousand eight hundred and *ninety-four*.

The condition of the above obligation is such, that if the above bounden obligor shall, on the *twentieth* day of *March*, one thousand eight hundred and *ninety-four*, make, execute, and deliver unto the said *Wm. Sharon*, or to his assigns, (provided that the said *Sharon* shall on or before that day have paid to the said obligor the sum of *ten thousand five hundred* dollars, *gold coin* of the United States of America, the price by said *Sharon* agreed to be paid therefor,) a good and sufficient deed for conveying and assuring to the said *Wm. Sharon*, free from all incumbrances, all his right, title, and interest, estate, claim, and demand, both in law and equity, as well in possession as in expectancy, of, in, or to that certain portion, claim, and mining right, title, or property on that certain vein or lode of rock containing precious metals of gold, silver, and other minerals, and situated in the *Big Cottonwood* Mining District, County of *Utah*, and Territory of *Utah*, and described as follows, to wit: *Commencing on the east or right bank of Big Cottonwood Canyon, as you ascend said canyon, distant southeasterly one hundred and fifty rods from Mill "A," thence southeasterly two thousand feet, and running parallel with and distant two hundred (200) feet easterly from that mining claim designated and known by the name of "Dolly Varden,"*—then this obligation to be void; otherwise, to remain in full force and virtue.

(Signed.)

#### No. 76.—Bond.

KNOW ALL MEN BY THESE PRESENTS: That we, *John Doe*, of the County of *Nevada*, State of *California*, as principal, and *Richard Roe* and *James Styles*, as sureties, are held and firmly bound unto *James Phelan*, of said County, in the sum of *twenty-three hundred and fifty* dollars, *gold coin* of the United States of America, to be paid to the said *James Phelan*, his executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, *jointly and severally*, firmly by these presents. Sealed with our seals, and dated the *twenty-third* day of *December*, one thousand eight hundred and *ninety-four*.

The condition of the above obligation is such, that if the above bounden *John Doe*, his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, in *gold coin* of the United States of America, unto the said *James Phelan*, his executors, administrators, or assigns, the just and full sum of *two thousand (2000) dollars*, in *gold coin* of the United States, in six months from the date hereof, with interest thereon at the rate of one and one-

*fourth per cent. per month*,—then the above obligation to be void; otherwise, to remain in full force and virtue.

(Signed.)

#### No. 77.—Bottomry Bond.

KNOW ALL MEN BY THESE PRESENTS: That I, *A. B.*, master and one-third owner of the ship *L.*, for myself and *P. C.*, who owns the other two-thirds of said ship, am held and firmly bound unto *A. F.*, in the penal sum of *one thousand* dollars, lawful money, for the payment of which to the said *A. F.*, his heirs, executors, administrators, or assigns, I hereby bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal. Dated the *second* day of *June*, 1881.

Whereas, the above bounden *A. B.* hath taken up and received of the said *A. F.* the just and full sum of *one thousand* dollars, which sum is to run at respondentia, on the block and freight of the said *L.*, whereof the said *A. B.* is now master from the port of *S. F.* on a voyage to the port of *N. Y.*, having permission to touch, stay at, and proceed to and call at, all ports and places within the limits of the voyage, at the rate of premium of *twelve* per cent. for the voyage. In consideration whereof, usual risks of the sea, rivers, enemies, fires, pirates, etc., are to be on account of the said *A. F.* And for further security of the said *A. F.*, the said *A. B.* doth, by these presents, mortgage and assign over to the said *A. F.*, his heirs, executors, administrators, and assigns, the said ship *L.* and her freight, together with all her tackle, apparel, etc. And it is hereby declared, that the said ship *L.* and her freight is thus assigned over for the security of the respondentia taken up by the said *A. F.*, and shall be delivered to no other use or purpose whatever, until payment of this bond is first made, with the premium that may become due thereon.

Now, therefore, the condition of this obligation is such, that if the above bounden *A. B.*, his heirs, executors, or administrators, shall and do well and truly pay, or cause to be paid, unto the said *A. F.*, or to his attorneys legally authorized to receive the same, his or their executors, administrators, or assigns, the just and full sum of *one thousand* dollars, being the principal of this bond, together with the premium which shall become due thereon, at or before the expiration of *twenty* days after the arrival of the ship *L.* at the port of *N. Y.*; or, in case of the loss of the said ship, such an average as by custom shall have become due on the salvage,—then this obligation is to be void; otherwise, to remain in full force and virtue.

Having signed to three bonds of the same tenor and date, the one of which being accomplished, the other two to be void and of no effect.

(Signed.)

## No. 78.—Bond—Another Form.

KNOW ALL MEN BY THESE PRESENTS: That *John Doe and Richard Roe*, of *Nipoma*, County of *San Luis Obispo*, State of *California*, are held and firmly bound unto *Charles W. Dana*, of the same place, in the sum of *one thousand five hundred* dollars, gold coin of the United States of America, to be paid to the said *Charles W. Dana*, his executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, and firmly by these presents.

Sealed with our seals and dated the *twentieth* day of *May*, one thousand eight hundred and *ninety-four*.

The condition of the above obligation is such, that if the above bounden *John Doe and Richard Roe*, or either of them, their or either of their heirs, executors or administrators, shall well and truly pay, or cause to be paid, in gold coin of the United States, unto the said *Charles W. Dana*, his executors, administrators, or assigns, the sum of *five hundred and fifty (550)* dollars, on or before the *seventh* day of *March*, one thousand eight hundred and *ninety-four*, together with interest thereon at the rate of *one and one-fourth (1¼)* per cent. per month, payable monthly, on the *seventh* day of each and every month,—then the above obligation to be void; otherwise, to remain in full force and virtue.

And it is hereby expressly agreed, that should any default be made in the payment of said interest, or of any part thereof, on any day whereon the same is made payable as above expressed, and should the same remain unpaid and in arrears for the space of *ten (10)* days, then and from thenceforth,—that is to say, after the lapse of the said *ten (10)* days,—the said principal sum of *five hundred and fifty* dollars, gold coin of the United States, with all arrearages of interest thereon, shall, at the option of the said *Dana*, his executors, administrators, or assigns, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

(Signed.)

## No. 79.—Bond, with Warrant of Attorney, to Confess Judgment.

KNOW ALL MEN, etc. [as in common bond, and then add:] the just and full sum of *one thousand* dollars, on demand, then the above obligation to be void; else to remain in full force and virtue.

Sealed, etc. [as in common bond].

Whereas I, *A. B.*, of, etc., am held and firmly bound unto *A. C.*, of, etc., by a certain bond or obligation of this date, in the



penal sum of *one thousand* dollars, conditioned for the payment of *five hundred* dollars, on demand: Now, therefore, I do authorize and empower any attorney in any court of record in the State of *California* to appear for me at the suit of the said obligee or his representatives, in an action of debt, and confess judgment against me upon the said bond or obligation, or for so much money borrowed, of any term or vacation of term, antecedent or subsequent to this date; and to release to the said obligee all errors that may intervene in obtaining such judgment, or in issuing execution on the same.

(Signed.)

**No. 80.—Bond for Performance, to be Indorsed on a Contract or Agreement.**

KNOW ALL MEN, *etc.* [*as in common bond:*] The condition of this obligation is such, that if the above bounden *A. B.*, his executors, administrators, or assigns, shall, in all things, stand to and abide by, and well and truly keep and perform, the covenants, conditions, and agreements in the within instrument contained, on his or their part to be kept and performed, at the time and in the manner and form therein specified,—then the above obligation shall be void; otherwise, to remain in full force and virtue.

(Signed.)

**No. 81.—Bond to Produce Bill of Lading.**

KNOW ALL MEN BY THESE PRESENTS: That we, *A. B.* and *C. D.*, composing the firm of *D. B. & Co.*, and *E. F.* and *G. H.*, of the City and County of *San Francisco*, and State of *California*, are held and firmly bound, unto the owners, masters, and consignees of the ship *Laura* in the penal sum of *one thousand* dollars, to be paid unto the said owners, master, or consignees, their executors, administrators, or assigns; to which payment, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, firmly by these presents.

The condition of this obligation is such, that whereas, *B. D. & Co.*, claim to be true and lawful consignees of certain goods, wares and merchandise, now on board the ship *Laura*, of which they hold no valid bill of lading: Now, in consideration of the delivery of said goods to the said *B. D. & Co.* by *L. X. & Co.*, the consignees of said ship *Laura*, without presentation of bill of lading, we, the undersigned, hereby agree to furnish to the said consignees of said ship, within *ten* days from the date hereof, a proper bill of lading of said goods, duly filled up to the order of said *B. D. & Co.*; or in default of furnishing such bill of lading, we hereby agree to hold the said owners, master, and consignees, of said ship harmless against the claims for the delivery of any party or parties whatsoever, and bind ourselves to pay to the said owners, master, or consignees, all loss or damage which they may

be called upon to pay in consequence of such delivery of said goods to said *B. D. & Co.*

Now, if the said *B. D. & Co.* do well and truly fulfill the conditions of the above agreement, then this obligation is to be void and of no effect; otherwise, to remain and be in full force and virtue.

In witness whereof, *etc.*

### No. 82.—Legatees' Bonds.

KNOW ALL MEN BY THESE PRESENTS: That we, *A. B.*, principal, and *C. D.* and *E. F.*, of, *etc.*, are held and firmly bound unto *A. L.* and *P. C.*, of, *etc.*, executors of the last will and testament of *W. B.*, deceased, late of the town of *D.*, in the sum of *one thousand* dollars, lawful money of the United States, to be paid to the said *A. L.* and *P. C.*, executors, as aforesaid, the survivor or survivors, or his or their assigns; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated the *second* day of *January*, one thousand eight hundred and *ninety-four*.

Whereas, in and by the last will and testament of the said *W. B.*, deceased, a legacy of *one thousand* dollars is bequeathed to the said *A. B.*, which has been paid to him by the said executors as aforesaid.

Now, the condition of this obligation is such, that if any debts against the deceased above named shall duly appear, and which there shall be no other assets to pay, and if there shall be no other assets to pay other legacies, or not sufficient, then the said *A. B.* shall refund the legacy so paid, or such ratable proportion thereof, with the other legatees of the deceased, as may be necessary for the payment of such debts and the proportional parts of other legacies, if there be any, and the costs and charges incurred by reason of the payment of the said *one thousand* dollars; and that if the probate of the will of the said deceased be revoked or the will declared void, then the said *A. B.* shall refund the whole of the legacy, with interest, to the said *A. L.* and *P. C.*, their executors, administrators or assigns.

(Signed.)

### No. 83.—Bond, Conditioned If Interest Not Paid within a Certain Time Whole Sum Due.

KNOW ALL MEN BY THESE PRESENTS: That I, *A. B.*, of the City of *A.*, in the county of *B.*, and State of *C.*, am held and firmly bound unto *A. P.*, of the same place, in the sum of *one thousand* dollars, lawful money of the United States, to be paid to the said *A. P.*, his executors, administrators, or assigns, for which payment, well and truly to be made, I bind myself, my



heirs, executors, and administrators, and every of them, firmly by these presents.

Sealed with my seal. Dated the *second* day of *May*, one thousand eight hundred and *ninety-four*.

The condition of the above obligation is such, that if the above bounden *A. B.*, or his heirs, executors, and administrators, shall well and truly pay, or cause to be paid, unto the above named *A. P.*, his executors, administrators, or assigns, the just and full sum of *one thousand* dollars, on the *second* day of *January*, which will be in the year one thousand eight hundred and *eighty-two*, and the interest thereon, to be computed from the date hereof, at and after the rate of *twelve* per cent. per annum, and to be paid *yearly*,—then the above obligation to be void; else to remain in full force and virtue.

And it is hereby expressly agreed, that should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable, as above expressed, and should the same remain unpaid and in arrear for the space of *thirty* days, then and from thenceforth,—that is to say, after the lapse of the said *thirty* days,—the aforesaid principal sum of *one thousand* dollars, together with all arrearage of interest thereon, shall, at the option of the said *A. P.*, his executors, administrators, and assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof, notwithstanding.

(Signed.)

#### No. 84.—Bond for Faithful Performance of Clerk.

KNOW ALL MEN BY THESE PRESENTS: That we, *John Smith* and *John Doe*, of *Troy, Ohio*, are held and firmly bound unto *Richard Roe*, of *Troy, Ohio*, in the sum of *one thousand* dollars, to be paid to the said *Richard Roe*, his executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators firmly by these presents.

Sealed with our seals. Dated the *first* day of *January*, one thousand eight hundred and *ninety-four*.

The condition of the above obligation is such, that, whereas the said *Richard Roe* has employed the said *John Smith* as a clerk in his business of banker: Now, if the said *John Smith* shall well and faithfully discharge his duties as such clerk, and shall also account for all moneys and property, and other things, which may come into his possession or under his control as such clerk,—then the above obligation to be void; otherwise, to remain in full force and virtue.

(Signed.)



**No. 85.—Bond of Treasurer or Trustee.**

KNOW ALL MEN BY THESE PRESENTS: That we, *J. D.*, as principal, and *R. R.* and *I. S.*, as sureties, all of the *City and County of San Francisco, State of California*, are held and firmly bound unto *H. H.* and *T. S.*, both of the said *City and County*, in the sum of *one thousand* dollars, *gold coin* of the United States, to be paid unto the said *H. H.* and *T. S.*, or their successors in office, or their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated the *twenty-fifth* day of *December*, one thousand eight hundred and *ninety-four*.

The condition of this obligation is such, that whereas the above-named *J. D.* has been chosen by an *association*, known as the *Union League*, treasurer [*or, one of the trustees*] of said *association*, by reason whereof, and as such treasurer [*or trustee*], he will receive into his hands and possession divers sums of money, goods, and chattels, and other things, the property of said *association*; and is bound to keep true and accurate accounts of said property, and of his receipts and disbursements for and on account of said *association*.

Now, therefore, if the said *J. D.* shall well and truly perform all and singular the duties of treasurer [*or trustee*] of said *association*, for and during his official term, and until he shall deliver all the property which he may receive as such treasurer [*or trustee*] to his successor in said office, or to such other person as the said *association*, or its authorized officers, may direct, according to the provisions of the constitution, by-laws, rules, and regulations of said *association* now existing, or which may be by said *association* adopted; and shall keep true and just accounts of all property belonging to the said *association* that may come to his hands; and shall exhibit and submit to the said *association*, or to the persons by them thereunto appointed, his said accounts, and the vouchers therefor, whenever he shall be thereto properly requested; and shall, at the expiration of his term of office, by any cause whatever, deliver up to his successor in office all the property of the said *association* that may be found to remain in his hands, and his books of accounts, and the vouchers thereunto belonging,—then this obligation shall be null and void; otherwise, to remain in full force and virtue.

(Signed.)

**No. 86.—Bond for Deed.**

KNOW ALL MEN BY THESE PRESENTS: That we, *F. J. Maguire* and *Thomas B. Noble*, of the *County of Santa Barbara, State of California*, are held and firmly bound unto *F. A. Thompson* of said *county and State*, in the sum of *five thousand two hundred*

and fifty dollars, gold coin of the United States of America, to be paid to the said *F. A. Thompson*, his executors, administrators, or assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the *twentieth* day of *December*, one thousand eight hundred and *ninety-four*.

The condition of the above obligation is such, that if the above bounden obligors shall, on or before the *third* day of *May*, one thousand eight hundred and *ninety-four*, make, execute, and deliver unto the said *F. A. Thompson* (provided that the said *Thompson* shall on or before that day have paid to the said obligors the sum of *two thousand seven hundred and fifty (2750)* dollars, gold coin of the United States of America, the price by said *Thompson* agreed to be paid therefor), a good and sufficient conveyance of grant, bargain, and sale (or, in fee simple), of all that certain lot, piece or parcel of land situate, lying and being in the *Town of Santa Barbara*, County of *Santa Barbara*, and State of *California*, and bounded and described as follows, to wit:

[Description.]

Then this obligation to be void; otherwise, to remain in full force and virtue.

(Signed.)

### No. 87.—Bond of Indemnity.

KNOW ALL MEN BY THESE PRESENTS: That I, *Cornelius Vanderbilt*, of the City of *New York*, in the State of *New York*, am held and firmly bound unto *Albert Dibblee*, of the City of *San Francisco*, in the State of *California*, in the sum of *five thousand two hundred and seventy-five* dollars, gold coin of the United States of America, to be paid to the said *Albert Dibblee*, his executors, administrators, or assigns, for which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal. Dated the *tenth* day of *January*, in the year of our Lord one thousand eight hundred and *ninety-four*.

Whereas, heretofore, one *Frederick B. Moses* filed his bill in the *District Court of the United States for the Northern District of California*, against the steamship *Cortes*, upon cause of action alleged to have accrued to him in the early part of the year *1890*; and whereas, such proceedings were afterwards had in said cause, in said court, that a judgment or decree was made and entered therein, on the *fifteenth* day of *December*, *1891*, that the said *Moses* do have and recover in said action the sum of *two thousand four hundred and fifty-nine* dollars, for his damages therein, and also the sum of *one hundred and seventy-one* dollars and *fifty cents*, for his costs of said action, and that the said steamship be condemned and sold to satisfy him for his



said damages and costs; and whereas, at the time when said alleged cause of action accrued, the above bounden obligor was the mortgagee and owner of the said *steamship*, and liable ever for the payment of such damages and costs; and whereas, an appeal has been taken from the said judgment or decree to the *Supreme Court of the United States*; and whereas, the said above bounden obligor has applied to the above named obligee to become one of the sureties in the stipulation to be given on the said appeal, to stay the execution of said decree, and abide the judgment and decree of the appellate court; and whereas, the said obligee has consented to become such surety, upon being indemnified against all loss or damage by reason thereof, and has executed and acknowledged the necessary stipulations on such appeal.

Now, the condition of this obligation is such, that if the said obligor, the said *Cornelius Vanderbilt*, or his heirs, executors, and administrators, shall and do, at all times hereafter, well and truly, save and keep the said obligee, *Albert Dibblee*, his executors and administrators, harmless of and from all actions, costs, damages, and counsel fees, of and from, and by reason of, or growing out of, such suretyship, and shall well and truly repay, or cause to be repaid, to the said obligee, his executors or administrators, on demand, any and all such sum and sums of money that he may be required to pay as such surety, as aforesaid, then this obligation to be void; else to remain in full force and virtue.

(Signed.)

#### No. 88.—Bond of Indemnity.

KNOW ALL MEN, *etc.*: Whereas the said *C. D.*, on the *sixth* day of *May*, 1894, did make, execute, and deliver unto the above bounden *A. B.*, for a valuable consideration, his promissory note for the sum of *one hundred* dollars, *gold coin* of the United States, payable on the *sixth* day of *August*, 1894, with interest at *one per cent. per month*, which said promissory note the said *A. B.*, since the delivery of the same to him, as aforesaid, has in some manner, to him unknown, lost out of his possession; and whereas the said *C. D.* has this day paid unto the said *A. B.* the sum of *one hundred and fifteen* dollars, the receipt whereof the said *A. B.* does hereby acknowledge, in full satisfaction and discharge of the said note, upon the promise of the said *A. B.* to indemnify and forever save harmless the said *C. D.* in the premises, and to deliver up the said note, when found, to the said *C. D.*, to be canceled:

Now, therefore, the condition of this obligation is such, that if the above bounden *A. B.*, his heirs, executors, or administrators, or any of them, do and shall, at all times hereafter, save and keep harmless the said *C. D.*, his heirs, executors, and administrators, of, from, and against the promissory note aforesaid, and of and



from all costs, damages, counsel fees, and expenses that shall or may arise therefrom; and also deliver, or cause to be delivered up, the said note, when found, to be canceled, then this obligation to be void; else to remain in full force and virtue.

(Signed.)

#### No. 89.—Bond of Indemnity to Surety.

KNOW ALL MEN, *etc.*: Whereas, the said *C. D.*, at the special instance and request of the above-bounden *A. B.*, has bound himself, together with the said *A. B.*, unto one *E. F.*, of, *etc.*, in a certain obligation, bearing even date herewith, in the penal sum of *one thousand* dollars, *gold coin* of the United States, conditioned for the payment, in like *gold coin*, of the sum of *five hundred* dollars, due and owing by the said *A. B.* to the said *E. F.* on, *etc.*, [*as in the bond; or, if a bail-bond be referred to, say—*conditioned for the appearance of the said *A. B.*, *etc.*]:

Now, therefore, the condition of the above obligation is such, that if the said *A. B.* shall well and truly perform and fulfill the condition of the said bond executed to the said *E. F.*, in manner and form as he is therein required to do, and at all times hereafter save harmless the said *C. D.*, his heirs, executors, and administrators, of and from the said obligation, and of and from all actions, costs and damages, for or by reason thereof, then this obligation to be void; else to remain in full force and virtue.

(Signed.)

#### No. 90.—Notary's Bond.

KNOW ALL MEN BY THESE PRESENTS: That we, *R. H.*, as principal, and *C. K.*, *E. S.*, and *G. H.*, as sureties, all of the City of *San Francisco*, State of *California*, the said *S. S.* in the sum of *five thousand* dollars, and the said sureties in the following-named sums, viz.: *C. K.*, for *five thousand* dollars, and *E. S.*, and *G. H.* for the sum of *twenty-five hundred* dollars each, making in the aggregate the whole penal sum of *five thousand* dollars, lawful money of the United States, to be paid to the said State of *California*; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this *twenty-sixth* day of *March*, 1894.

The condition of the above obligation is such, that whereas, *G. C. P.*, Governor of *California*, has appointed and commissioned the above-bounden *R. H.*, a Notary Public in and for the City and County of *San Francisco*, by commission dated the *third* day of *March*, 1880; Now, therefore, if the said *R. H.* shall well and truly perform the duties of a notary public, as aforesaid, during his incumbency of said office under and by virtue of the commis-

sion aforesaid, according to law, and shall faithfully discharge all duties which may be required of him by any law enacted subsequently to the execution of this bond, then this obligation shall become void; otherwise, to remain in full force and effect.

Witness our hands, *etc.*

### No. 91.—Indemnity Bond on Attachment.

KNOW ALL MEN BY THESE PRESENTS: That we, *George Brown*, as principal, and *Samuel Davis* and *David Samuels*, as sureties, are held and firmly bound unto *Peter Hopkins*, Sheriff of the City and County of *San Francisco*, State of *California*, in the sum of *five thousand five hundred and fifty* dollars, gold coin of the United States of America, to be paid to the said Sheriff, or his certain attorney, executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the *twenty-sixth* day of *January*, 1894.

Whereas, under and by virtue of a writ of attachment, issued out of the *Superior Court* of the *City and County of San Francisco*, in an action wherein the said *George Brown* is plaintiff, and *Joseph R. Snow* and *Edward Huff*, defendants, against said defendants, directed and delivered to said *Peter Hopkins*, Sheriff of the *City and County of San Francisco*, the said Sheriff was commanded to attach and safely keep all the property of said defendants within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand; amounting to *two thousand five hundred and sixty-six* dollars and *forty-five* cents, *United States gold coin*, as therein stated, and the said Sheriff did thereupon attach the following described goods and chattels, viz:

[Here insert description.]

And whereas, upon the taking of the said goods and chattels, by virtue of the said writ, *one Nathaniel Burnes* claimed the said goods and chattels as his own property.

And whereas, the said plaintiff, notwithstanding such claiming, requires of said Sheriff that he shall retain said property under such attachment and in his custody.

Now, therefore, the condition of this obligation is such, that if the said *George Brown*, *Samuel Davis* and *David Samuels*, their heirs, executors, and administrators, or either of them, shall well and truly indemnify and save harmless the said Sheriff, his heirs, executors, and administrators, of and from all damages, expenses, costs, and charges, and against all loss and liability which he, the said Sheriff, his heirs, executors, or administrators, shall sustain, or in anywise be put to, for or by reason of the attachment, seizing, levying, taking, or retention by the said Sheriff, in his custody, under said attachment, of the said property claimed as



aforesaid, then the above obligation to be void; otherwise, to remain in full force and virtue.

(Signed.)

STATE OF *California*, }  
City and County of *San Francisco*. } ss.

*Samuel Davis* and *David Samuels*, whose names are subscribed as the sureties to the above bond, being severally duly sworn, each for himself says: that he is a resident and freeholder of the State of *California*, and is worth the sum in the said bond specified as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

Subscribed and sworn to, *etc.*

NOTE 1.—This Bond will do for Constable by changing the word *Sheriff* to *Constable*, and substituting *Justice's Court* for *Superior Court*.

### No. 92.—Indemnity Bond on Execution.

KNOW ALL MEN BY THESE PRESENT: That we, *George Brown*, of the *City and County of San Francisco*, as principal, and *Samuel Davis* and *David Samuels*, of said *city and county*, as sureties, are held and firmly bound unto *P. J. White*, Sheriff of the *City and County of San Francisco, State of California*, in the sum of *two thousand eight hundred and fifty dollars, gold coin* of the United States of America, to be paid to said Sheriff, or his certain attorney, executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the *sixteenth* day of *October*, 1894.

Whereas, under and by virtue of a writ of execution, issued out of the *Superior Court* of the *City and County of San Francisco, State of California*, in an action wherein the said *George Brown* is plaintiff, and *Joseph R. Snow* and *Edward Huff*, defendants, against said defendants, directed and delivered to said *P. J. White*, Sheriff of the *City and County of San Francisco, State of California*, the said Sheriff was commanded to satisfy the judgment in United States *gold coin*, with interest, out of the personal property of such defendants within his county not exempt from execution, and if sufficient personal property could not be found, then out of the real property belonging to them, or either of them, said defendants, on the day when the said judgment was docketed, or at any time subsequently; the said Sheriff did thereupon levy upon and take into his possession the following described goods and chattels:

[Description.]

And whereas, upon the taking of the said goods and chattels by virtue of the said writ, *one Nathaniel Burnes*, of said *city and county*, claimed the said goods and chattels as his own property.



And whereas, the said *plaintiff*, notwithstanding such claiming, requires of said Sheriff that he shall retain said property under such levy and in his custody.

Now, therefore, the condition of this obligation is such, that if the said *George Brown, Samuel Davis* and *David Samuels*, their heirs, executors, and administrators, or either of them, shall well and truly indemnify and save harmless the said Sheriff, his heirs, executors, administrators, and assigns, of and from all damages, expenses, costs and charges, and against all loss and liability which he, the said Sheriff, his heirs, executors, administrators, or assigns, shall sustain or in anywise be put to, for or by reason of the levy, taking, sale, or retention by the said Sheriff, in his custody, under said execution, of the said property claimed as aforesaid, then the above obligation to be void; otherwise, to remain in full force and virtue.

(Signed.)

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## BY-LAWS.

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### No. 93—By-Laws of a Corporation.

#### BY-LAWS OF THE EQUITABLE TUNNEL COMPANY.

##### ARTICLE I.

The officers shall consist of a President, Vice-President, Treasurer, and Secretary, who shall, with the exception of the Secretary and Treasurer, be chosen by the Directors from among themselves.

##### ARTICLE II.

SECTION 1. A Board of Directors shall be elected at the annual meeting of the stockholders. The Directors elect shall serve for one year from the *first Monday of May, 1881*, and until their successors are elected and qualified.

SEC 2. No stockholder shall be eligible for election as a member of the Board of Directors unless he is a *bona fide* owner of at least *two* shares of the capital stock of the company at the time of his election.

##### ARTICLE III.

SECTION 1. PRESIDENT. The President shall preside at all meetings of the Directors or stockholders. He shall sign, as President, all certificates of stock, and all contracts, and other instruments in writing which have been first approved by the Board of Directors. He shall draw all checks and warrants upon the treasury. He shall call the Directors together whenever he deems it necessary; and he shall have, subject to the advice and control of the Directors, the general superintendence of the

affairs of the company. In the absence of the President, the Vice-President shall perform his duties.

SEC. 2. TREASURER. It shall be the duty of the Treasurer to keep safely all moneys and bullion belonging to the company, and disburse the same under the direction of the Board of Directors, on warrants signed by the President and Secretary. At each annual meeting of the stockholders, he shall submit a complete statement of his accounts for the past year, with the proper vouchers, for their information. He shall discharge such other duties pertaining to his office as shall be prescribed by the Board of Directors.

SEC. 3. SECRETARY. It shall be the duty of the Secretary to keep a record of the meetings of the Board of Directors and of the stockholders. He shall keep the book of blank certificates of stock, fill up and countersign all the certificates issued, and make the corresponding entries on the margin of each book, on such issuance. He shall keep a proper transfer book, and a stock ledger in debit and credit form, showing the number of shares issued to and transferred by any stockholder, and the dates of such issuance and transfer. He shall countersign all checks, keep proper account books, and discharge such other duties as pertain to his office, and are prescribed by the Board of Directors.

#### ARTICLE IV.

The Board of Directors shall have power: 1. To call meetings of stockholders when they deem necessary, giving not less than two weeks' notice thereof, in manner as hereinafter provided; and they shall call meetings of the stockholders at any time, upon a written request for that purpose, of persons representing *one-tenth* of all the capital stock. 2. To make rules and regulations not inconsistent with the laws of the *State of California* or the by-laws of the company, for the guidance of the officers and management of the affairs of the company. 3. To declare dividends out of the surplus profits, whenever they shall deem it expedient. 4. To incur such indebtedness as they may deem necessary; *provided*, however, that no indebtedness over *one thousand dollars* shall at any time be incurred by the company, and to authorize the execution, by the President and Secretary, of any note for such indebtedness.

#### ARTICLE V.

It shall be the duty of the Board of Directors: 1. To cause to be kept a complete record of all their meetings and acts, and also of the proceedings of the stockholders; and to present a full statement at the regular annual meeting of the stockholders, showing in detail the assets and liabilities of the company, and generally the condition of its affairs. A similar statement shall be presented at any other meeting of the stockholders, when thereto required by persons representing at least *one-tenth* of the

capital stock of the company. 2. To supervise all the acts of the officers and employees, require the Secretary and Treasurer to keep full and accurate books and accounts, and to prescribe the form and mode of keeping such books. 3. To cause to be issued to the stockholders, in proportion to their several interests, certificates of stock, not to exceed in the aggregate the capital stock of the company. 4. To cause the moneys of the company to be safely kept, directing, from time to time, where they shall be kept or deposited.

## ARTICLE VI.

A General Superintendent shall be appointed by the Board of Directors, and be removable at their pleasure. It shall be his duty: 1. To take charge of all the property belonging to the company, and to control and direct all labor and business pertaining to the interests, objects, and operations of the company, at the mines, but entirely subject to the direction and control of the Board of Directors, or of the President of the company. 2. To make monthly returns to the Board of Directors, of all persons hired or employed at the mines and works, add a statement of all expenditures, accompanying the same with the necessary vouchers, and a similar statement of ore extracted, and the disposition of the same, and report the general condition of the mines and works. 3. To make requisition upon the Board of Directors for necessary funds, stating the precise objects for which they are required, and, if approved by the Board, the money shall be transmitted to him in such mode as they may direct; but he shall not have the power to sign notes or contracts for the company; neither shall he have the power to incur any indebtedness, unless so especially authorized by the President or Board of Directors.

## ARTICLE VII.

The members of the Board of Directors shall receive no compensation for their services as such, nor shall the company be held liable for any services rendered, except it is so expressly provided; but members of the Board shall be allowed their reasonable traveling expenses when actually engaged in the business of the company, to be audited and allowed as in other cases of demand against the company. The Secretary and Superintendent shall receive such compensation for their services as the Board of Directors shall determine.

## ARTICLE VIII.

No contract by any officer of the company shall be valid without the previous authorization or subsequent ratification of the Board of Directors.

## ARTICLE IX.

SECTION. 1. The regular annual meeting of the stockholders shall be held on the *last Saturday of April* of each year, at the office



of the company, in the *City and County of San Francisco, California*. A representation of a majority of the capital stock shall be necessary for the transaction of the business of all meetings of stockholders. At such meetings a representation by proxy, duly appointed, shall be allowed, such proxy to be in writing, and filed with the Secretary of the company.

SEC. 2. A regular *monthly* meeting of the Board of Directors shall be held on the *first Tuesday of each month*, and special meetings of the Board may be called by the President, whenever he may deem it expedient. A majority of the Board of Directors shall constitute a quorum for the transaction of business.

SEC. 3. All meetings of the stockholders shall be called by a notice published at least three times a week for two weeks in a daily newspaper in the *said city and county*, and also in *some daily paper published at the City of Salt Lake, Territory of Utah*.

#### ARTICLE X.

Certificates of stock shall be of such form and device as the Board of Directors may direct, and such certificates shall be signed by the President and Secretary, and express on its face their number, date of issuance, number of shares for which and the persons to whom issued. Several certificates may be issued to the same person or persons, provided that in the aggregate they do not exceed the number of shares belonging to such person or persons. The Certificate Book shall contain a margin on which shall be entered the number, date, number of shares, and the name or names of the person or persons expressed in the corresponding certificates.

#### ARTICLE XI.

Shares of the company may be transferred at any time by the holders thereof, or by attorney legally constituted, or by legal representative. But no transfer shall be valid except between the parties thereto, until entered in the proper form on the books of the company. The surrendered certificates shall be canceled before a new certificate shall be issued in lieu thereof. The receiver of the new certificate shall be required to signify his assent to the by-laws of the company; and no transfer of any share of stock shall be valid, upon which any assessments are due and unpaid, or to the holder of which is indebted to the company on any account whatever, without the consent of the Board of Directors.

#### ARTICLE XII.

The books and papers, in the office of the Secretary and Treasurer, shall at all times during business hours be open to the inspection of the Board of Directors, and of any stockholder.

ARTICLE XIII.

These by-laws may be altered or amended at any annual meeting of the company, or at any special meeting called for that purpose, by a vote of two-thirds of the subscribed stock. Also by a vote of a majority of the Board of Directors at any meeting of the Board.

ARTICLE XIV.

These by-laws shall always remain in possession of the Secretary of the company and may be inspected at any time during office hours by any stockholder.

CERTIFICATE.

We, the undersigned, a majority of the Directors of the *Equitable Tunnel Company*, hereby certify, that the foregoing By-Laws, consisting of fifteen articles, have been duly adopted as the by-laws of said corporation. Witness our hands, this *tenth* day of *May*, 1894.

(Certified by Secretary. Seal.)

NOTE A.—Under the laws of California, by-laws must be adopted within one month after filing articles of incorporation, and must be copied into a book, to be known as the "Book of By-Laws;" and no by-law takes effect until so copied. Civil Code, secs. 301, 304.

NOTE B.—It is suggested that a day certain be set in the by-laws for Directors' meetings. Then notice will be unnecessary. One meeting a month ought to be sufficient. If other meetings are necessary, they may be specially called.

CERTIFICATES.

No. 94.—Certificate of Copartnership.

STATE OF California, }  
City and County of San Francisco. } ss.

We, the undersigned, do hereby certify that we are partners transacting business in this State, at the *City and County of San Francisco*, under the firm name and style of *A. L. Bancroft & Co.*; that the names in full of all the members of such partnership are *Hubert H. Bancroft* and *Albert L. Bancroft*, and that the places of our respective residences are set opposite our respective names hereto subscribed.

In witness whereof we have hereunto set our hands, this *fourth* day of *July*, 1894.

No. 95.—Certificate of Appointment of Road Overseer.

STATE OF California, }  
County of San Mateo. } ss.

I, *H. Walker*, County Clerk of said county, and ex-officio Clerk of the Board of Supervisors therein, do hereby certify, that at a

regular meeting of said Board, held on Monday, the sixteenth day of November, 1880, Thomas Hanly was duly appointed Road Overseer of Road District No. 3, of Township No. 2, of said county, as appears by the records of the proceedings of said Board of Supervisors now in my custody.

Witness my hand and the seal of said Board of Supervisors, this seventeenth day of November, 1894.

### No. 96—Certificate of Appointment—Oath to.

STATE OF California, }  
County of San Mateo. } ss.

I do swear that I will support the Constitution of the United States, and the Constitution of the State of California, and that I will faithfully discharge the duties of Road Overseer of Road District No. 3, of Township No. 2, County of San Mateo, according to law and the best of my ability.

(Subscribed and sworn to.)

### No. 97.—Certificate that Notary Public has Taken his Official Oath, etc.

OFFICE OF THE COUNTY CLERK, }  
County of Amador. }

I, L. J. Fontenrose, County Clerk of the County of Amador, State of California, do hereby certify that on the tenth day of July, A. D. 1894, Edgar Washington Bishop, duly qualified as Notary Public in and for said county, taking his official oath and filing his official bond as by law required, and which bond was duly approved, as by law required.

In witness whereof, I have hereunto set my hand and affixed the seal of the County Clerk of the said county, this tenth day July, 1881.

L. J. FONTENROSE,  
County Clerk.

### No. 98—Certificate of Deposit.

THIS IS TO CERTIFY, that Henry Brown has deposited with me one thousand dollars; and I agree to deliver said money to said Henry Brown, or order, on presentation of this certificate indorsed by the said Brown.

(Signed.)



# CERTIFICATES OF ACKNOWLEDGMENT.

## No. 99.—Acknowledgment—Notary Public—General.

STATE OF California, }  
County of Sonoma. } 88.

On this *tenth* day of *June*, one thousand eight hundred and *ninety-four*, before me, *B. Folger*, a Notary Public in and for the County of *Sonoma*, personally appeared *C. Bates*, known to me to be the same person whose name is subscribed to the within instrument, and he duly acknowledged to me that he executed the same.

In witness whereof, *etc.*

NOTE 1.—In California acknowledgments may be taken by a Justice or Clerk of the Supreme Court, or Judge of Superior Court; in a city and county or county, by a Clerk of Superior Court, County Recorder, Notary Public, or Commissioner of Court; in a township, by a Justice of the Peace; at any other place in the United States, within jurisdiction (boundaries of), by a Justice, Judge, or Clerk of a Court of Record of the United States. Also, before similar officers of a Court of Record of any State, or by a Commissioner appointed by the Governor, or before a Notary Public or any other officer of the State where the acknowledgment is to be made authorized by its laws to take acknowledgments. C. C., secs. 1180-1182.

Without the United States, by a Minister, Commissioner, *Chargé d'Affaires* of the United States, Resident Consul, Vice-Consul, or Consular Agent of the United States; also, before a Judge of a Court of Record, or before a Notary Public or Commissioner appointed by the Governor of California. *Id.*, sec. 1183.

Deputies of any of the foregoing may take acknowledgments in the name of his principal. *Id.*, sec. 1184.

Married women need not be examined separate and apart from their husbands. *Id.*, sec. 1187.

The certificate may be indorsed on or attached to the instrument. *Id.*, secs. 1188-1200. The certificate of a Justice of the Peace to be used out of his county must be certified by the County Clerk of his county under seal. *Id.*, sec. 1191.

The officer taking the acknowledgment must authenticate his certificate by his seal (if any), signature, and the name of his office. *Id.*, sec. 1193. After the signature and name of office, it is usual to say: "In and for the county [or city and county] of —, State of California."

NOTE 2.—In Montana the same as in California. C. C., secs. 1600-1627.

NOTE 3.—In Utah the same as in California, except the word "personally" must be inserted before "known" in the form. In the Territory, a Judge of a Court having a seal may take acknowledgments, or a Notary, or County Recorder, or Justice of the Peace, in his county. At any other place in the United States, by a Judge or Clerk of a United States Court, or any State or Territory Court having a seal, or by a Notary Public or Commissioner of the Territory of Utah. Comp. Laws, secs. 2625-2640.

NOTE 4.—In North and South Dakotas the same as in California. Comp. Laws, secs. 3279-3283.

NOTE 5.—In Arizona, as to the form, the same as in California, except when a wife conveys the homestead. (As to the homestead, see No. 121.) Rev. Stats., secs. 2576-2593.

NOTE 6.—In Nevada the same as to the unmarried as in California's form (No. 99) to the words, "executed the same"; then insert the words, "freely and voluntarily, and for the uses and purposes therein mentioned." Gen. Stats., secs. 2577-2584. (As to who may take, see Gen. Stats., sec. 2572.)

(As to married women, see No. 121.)

NOTE 7.—In Idaho the same as in California, except as to married women. Rev. Stats., secs. 2950-2976. (As to married women, see No. 121.)

NOTE 8.—In Colorado the same general form as in California can be used; except as to the homestead, the same as in Arizona. Mills' Annotated Stats., secs. 442, 2137.

NOTE 9.—In Oregon acknowledgments may be taken before any Judge of the Supreme Court, County Judge, Justice of the Peace, or Notary Public within the State. In any other State or Territory of the United States, before a Judge of a Court of Record, Justice of the Peace, Notary Public, or other officer authorized by the laws thereof to take acknowledgments, or before a Commissioner for Oregon. In a foreign country, before a Notary Public, Minister, *Chargé d'Affaires*, Commissioner, or United States Consul,

appointed to reside therein. No statutory forms are given. California's forms, Nos. 99, 100, 117, 122, ought to be good, under the provisions of section 3002 (p. 1357), Hill's Annotated Laws, providing that deeds may be "acknowledged and proved . . . as directed in this title, without any other act or ceremony whatever." Hill's Annotated Laws, pp. 1357-1361. (See No. 121.)

NOTE 10.—In Wyoming the same as in Arizona. Rev. Stats., secs. 8, 11, 14, 2781. (See No. 121.)

NOTE 11.—In Washington acknowledgments may be taken in the State before a Judge of the Supreme Court or its Clerk or deputy, a Judge of a Superior Court or its Clerk or deputy, a Justice of the Peace, County Auditor or his deputy, or a Notary Public. In any other place in the United States, before any person authorized to take it by the laws thereof. In a foreign country the same as in California, and before the "proper officer of any Court of said country, or the Mayor or other chief magistrate of any city, or town, or municipal corporation." Hill's Stats. and Codes, secs. 1430-1446. There appears to be but one form, viz:

"STATE OF WASHINGTON,  
County of Skamania. } ss.

"I, [here give the name of officer and official title], do hereby certify that on this twentieth day of September, 1894, personally appeared before me [name of grantor, and, if acknowledged by wife, her name, then add 'his wife,'], to me known to be the individual [or individuals] described in and who executed the within instrument, and acknowledged that he [or she, or they] signed and sealed the same, as his [or her, or their] free and voluntary act and deed, for the uses and purposes therein mentioned.

"Given under my hand and seal, this twentieth day of September, A. D. 1894."

[Signature of officer.]

Hill's Stats. and Codes, sec. 1437.

### No. 100.—Acknowledgment—Notary Public—Wife.

STATE OF Idaho, }  
County of Alturas. } ss.

On this *second* day of *May*, one thousand eight hundred and *ninety-five*, before me, *Warren Bosworth*, a Notary Public in and for the said *Alturas* County, personally appeared *Mary Center*, known to me to be the same person whose name is subscribed to the within instrument, and she acknowledged to me that she executed the same.

In witness whereof, *etc.*

NOTE.—See notes to Form No. 99.

### No. 101.—Acknowledgment—Notary Public—Husband and Wife.

STATE OF California, }  
County of San Mateo. } ss.

On this *second* day of *May*, one thousand eight hundred and *ninety-five*, before me, *H. Walker*, Notary Public in and for the said *San Mateo* County, State of California, personally appeared *John Ames*, and *Mary Ames*, his wife, known to me to be the same persons whose names are subscribed to the within instrument, who each of them acknowledged to me that they, each of them respectively, executed the same.

In witness whereof, *etc.*

NOTE.—See notes to Form No. 99.

**No. 102.—Acknowledgment—Notary Public—Husband and Wife—Proven.**

STATE OF California, }  
County of Sonoma. } ss.

On this *second* day of *July*, one thousand eight hundred and *ninety-five*, before me, *Samuel Davis*, a Notary Public in and for the County of *Sonoma*, personally appeared *John Smith*, and *Sophia Smith*, his wife, satisfactorily proved to me to be the same persons described in and who executed the within instrument, by the oath of *George Comstock*, a competent and credible witness for that purpose, by me duly sworn, and the said *John Smith*, and *Sophia Smith*, his wife, each of them, acknowledged to me that they respectively executed the same.

In witness whereof, *etc.*

NOTE.—See notes to Form No. 99.

**No. 103.—Acknowledgment—Notary Public—Witness.**

STATE OF California, }  
County of Sonoma. } ss.

On this *second* day of *May*, one thousand eight hundred and *ninety-five*, before me, *Palmer Wood*, a Notary Public in and for the said county, personally appeared *Joseph M. Wood*, known to me to be the same person whose name is subscribed to the within instrument, as a witness thereto, who, being by me duly sworn, deposed and said, that he resides in the Town of *Sonoma*; that he was present and saw *John F. Swift* (personally known to him to be the same person described in and who executed the said instrument, as party thereto,) sign, seal, and deliver the same; and that the said *John F. Swift* duly acknowledged, in the presence of said affiant, that he executed the same, and that he, the said affiant, thereupon, and at his request, subscribed his name as a witness thereto.

In witness whereof, *etc.*

NOTE.—See notes to Form No. 99; and as to "personally," see note to Form No. 119.

**No. 104.—Acknowledgment—Notary Public—Attorney-in-Fact.**

STATE OF California, }  
County of Sierra. } ss.

On this *second* day of *July*, one thousand eight hundred and *ninety-five*, before me, *Thomas H. Holt*, a Notary Public in and for the County of *Sierra*, personally appeared *Joseph C. Bates*, known to me to be the same person whose name is subscribed to the within instrument as the attorney-in-fact of *Caroline Hawes*: and



the said *Joseph C. Bates*, acknowledged to me that he subscribed the name of the said *Caroline Hawes* thereto as principal, and his own name as attorney-in-fact.

In witness whereof, *etc.*

NOTE.—See notes to Form No. 99.

### No. 105.—Acknowledgment—Notary Public—Party Proven.

STATE OF *California*, } ss.  
County of *Sierra*. }

On this *second* day of *May*, one thousand eight hundred and *ninety-five*, before me, *F. J. Thibault*, a Notary Public in and for the said County of *Sierra*, personally appeared *W. W. Stow*, satisfactorily proved to me to be the same person described in and who executed the within instrument, by the oath of *Leland Stanford*, a competent and credible witness for that purpose, by me duly sworn, and he, the said *W. W. Stow*, acknowledged to me that he executed the same.

In witness whereof, *etc.*

NOTE.—See notes to Form No. 99.

### No. 106.—Acknowledgment—Notary Public—Corporation.

STATE OF *California*, } ss.  
County of *Sonoma*. }

On this *second* day of *May*, one thousand eight hundred and *ninety-five*, before me, *G. A. Johnson*, a Notary Public in and for the County of *Sonoma*, personally appeared *James Phelps*, known to me to be the *President* of the *Gold Run Mining Company*, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, *etc.*

NOTE.—See notes to Form No. 99.

### No. 107.—Acknowledgment—County Clerk—General.

STATE OF *California*, } ss.  
County of *Sierra*. }

On this *second* day of *June*, one thousand eight hundred and *ninety-five*, before me, *W. A. Stuart*, County Clerk of the County of *Sierra*, personally appeared *W. Harding*, known to me to be the same person whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

In witness whereof, *etc.*

NOTE.—See notes to Form No. 99.

**No. 108.—Acknowledgment—County Clerk—Attorney-in-Fact.**

STATE OF *California*, }  
County of *Santa Clara*. } ss.

On this *second* day of *May*, one thousand eight hundred and *ninety-five*, before me, *J. S. Jones*, County Clerk, and ex-officio Clerk of the Superior Court of the said County of *Santa Clara*, personally appeared *J. T. Smith*, known to me to be the same person whose name is subscribed to the within instrument, as the attorney-in-fact of *William Smith*, and the said *J. T. Smith* duly acknowledged to me that he subscribed the name of *William Smith* thereto as principal, and his own name as attorney-in-fact.

In witness whereof, *etc.*

NOTE.—See notes to Form No. 99.

**No. 109.—Acknowledgment—County Clerk—Witness.**

STATE OF *California*, }  
County of *San Mateo*. } ss.

On this *second* day of *March*, one thousand eight hundred and *ninety-five*, before me, *H. Walker*, County Clerk of said *San Mateo* County, personally appeared *William Wallace*, personally known to me to be the same person whose name is subscribed to the within instrument, as a witness thereto, who, being by me duly sworn, deposed and said, that he resides in *Redwood City*, County of *San Mateo*, State of *California*; that he was present and saw *Andrew Teague* (known to him to be the same person described in and who executed the said instrument) sign, seal, and deliver the same; and that the said *Andrew Teague* acknowledged in the presence of said affiant that he executed the same, and that he, the said affiant, at his request, subscribed his name as a witness thereto.

In witness whereof, *etc.*

NOTE.—See notes to Form No. 99; and as to "personally," see note to Form No. 119.

**No. 110.—Acknowledgment—County Recorder—General.**

STATE OF *California*, }  
County of *Santa Barbara*. } ss.

On this *second* day of *March*, one thousand eight hundred and *ninety-five*, before me, *A. Doe*, County Recorder in and for the said *Santa Barbara* County, personally appeared *R. Roe*, known to me to be the same person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, *etc.*

NOTE.—See notes to Form No. 99.

**No. 111.—Acknowledgment—County Recorder—Witness.**

STATE OF *California*, }  
 County of *San Mateo*. } ss.

On this *sixteenth* day of *May*, one thousand eight hundred and *ninety-five*, before me, *W. Walker*, County Recorder in and for the said *San Mateo* County, personally appeared *H. Noble*, known to me to be the same person whose name is subscribed to the annexed instrument, as a witness thereto, who, being by me duly sworn, deposed and said, that he resides in said County of *San Mateo*; that he was present and saw *Caroline Hawes* (personally known to him to be the same person described in and who executed the said within instrument as a party thereto) sign, seal, and deliver the same; and that the said *Caroline Hawes* acknowledged, in the presence of said affiant, that she executed the same, and that he, said affiant, at her request, subscribed his name as a witness thereto.

In witness whereof, *etc.*

NOTE.—See notes to Form No. 99; and as to "personally," see note to Form No. 119.

**No. 112.—Acknowledgment—County Recorder—Attorney-in-Fact.**

STATE OF *California*, }  
 County of *Madera*. } ss.

On this *second* day of *July*, one thousand eight hundred and *ninety-five*, before me, *Thomas Young*, County Recorder in and for the said County of *Madera*, personally appeared *John Hunt, Jr.*, known to me to be the same person whose name is subscribed to the within instrument as the attorney-in-fact of *George F. Sharp*; and the said *John Hunt, Jr.*, duly acknowledged to me that he subscribed the name of *George F. Sharp* thereto as principal, and his own name as attorney-in-fact.

In witness whereof, *etc.*

NOTE.—See notes to Form No. 99.

**No. 113.—Acknowledgment—Justice of the Peace—Husband and Wife.**

STATE OF *California*, }  
 County of *San Mateo*. } ss.

On this *second* day of *May*, one thousand eight hundred and *ninety-five*, before me, *George W. Cox*, a Justice of the Peace in and for the County of *San Mateo*, personally appeared *William Clark*, and *Rebecca T. Clark*, his wife, known to me to be the same persons whose names are subscribed to the within instrument, who each of them duly acknowledged to me that they respectively executed the same.



In witness whereof, I have hereunto set my hand and affixed my private seal at my office (having no seal of office), the day and year in this certificate first above written.

NOTE.—See notes to Form No. 99.

**No. 114.—Acknowledgment—Justice of the Peace—General.**

STATE OF *California*, }  
County of *San Diego*. } ss.

On this *second* day of *May*, one thousand eight hundred and *ninety-five*, before me, *Ramon Pacheco*, a Justice of the Peace in and for said County of *San Diego*, personally appeared *Peter Jones*, known to me to be the same person whose name is subscribed to the said within instrument, who duly acknowledged to me that he executed the same.

In witness whereof, *etc.*, [*same as in No. 113*].

NOTE.—See notes to Form No. 99.

**No. 115.—Acknowledgment—Justice of the Peace—Witness.**

STATE OF *California*, }  
County of *Sierra*. } ss.

On this *second* day of *May*, one thousand eight hundred and *ninety-five*, before me, *George W. Cox*, a Justice of the Peace in and for the County of *Sierra*, personally appeared *William Wallace*, known to me to be the same person whose name is subscribed to the within instrument, as a witness thereto, who, being by me duly sworn, deposed and said, that he resides in *Redwood City*, County of *San Mateo*; that he was present and saw *James L. King* (personally known to him to be the same person described in and who executed the said instrument) sign, seal, and deliver the same, and that the said *James L. King* duly acknowledged, in the presence of said affiant, that he executed the same, and that he, the said affiant, at his request, thereupon subscribed his name as a witness thereto.

In witness whereof, *etc.*, [*same as in No. 113*].

NOTE.—See notes to Form No. 99; and as to "personally," see note to Form No. 119.

**No. 116.—Acknowledgment—Justice of the Peace—Attorney-in-Fact.**

STATE OF *California*, }  
County of *Shasta*. } ss.

On this *second* day of *June*, one thousand eight hundred and *ninety-five*, before me, *Hiram Tibbets*, a Justice of the Peace in and for the County of *Shasta*, personally appeared *William Rising*, known to me to be the same person whose name is subscribed to the within instrument as the attorney-in-fact of *John H. Ring*,

and the said *William Rising* acknowledged to me that he subscribed the name of *John H. Ring* thereto as principal, and his own name as attorney-in-fact.

In witness whereof, *etc.*, [same as in No. 113].

NOTE.—See notes to Form No. 99.

### No. 117.—Acknowledgment before Commissioner—General.

STATE OF Nevada, }  
County of Storey. } ss.

On this *second* day of *July*, one thousand eight hundred and *ninety-five*, before me, *Charles R. Spencer*, a Commissioner of Deeds for the State of *California*, duly appointed, commissioned, and sworn, and residing at *Virginia*, in said County of *Storey*, State of *Nevada*, personally appeared *John Snow* known to me to be the same person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, *etc.*

NOTE.—See notes to Form No. 99.

### No. 118.—Acknowledgment before Commissioner—Husband and Wife.

STATE OF Nevada, }  
County of Storey. } ss.

On this *second* day of *May*, one thousand eight hundred and *ninety-five*, before me, *F. A. Waterman*, a Commissioner of Deeds for the State of *California*, duly appointed, commissioned, and sworn, and residing at *Virginia City*, in said County of *Storey*, State of *Nevada*, personally appeared *John Harris*, and *Clara Harris*, his wife, whose names are subscribed to the within instrument, known to me to be the same persons described in and who executed the said instrument, who each of them acknowledged to me that they, each of them respectively, executed the same.

In witness whereof, *etc.*

NOTE.—See notes to Form No. 99.

### No. 119.—Acknowledgment before Commissioner by Witness.

STATE OF New York, }  
County of New York. } ss.

On this *second* day of *December*, one thousand eight hundred and *ninety-five*, before me, *John J. Rising*, a Commissioner of Deeds for the State of *California*, duly appointed, commissioned, and sworn, and residing in the said City of *New York*, County of *New York*, personally appeared *Nathaniel Thwing*, personally known to me to be the same person whose name is subscribed to the within

instrument as a witness thereto, who, being by me duly sworn, did depose and say, that he resides in said *City of New York*; that he was present and saw *Henry P. Jones* and *Jeremiah Swift* (who are each known to him to be the same persons described in and who executed the annexed instrument) freely and voluntarily sign, seal, and deliver the same; and that he, the deponent, thereupon, and at their request, subscribed his name as a witness thereto.

In witness whereof, *etc.*

NOTE.—Of all the forms of acknowledgments in this book, only four in California are statutory. All the others have been constructed from time to time by those who had use for them. They come into form books in the usual manner. Form No. 119 is not statutory. As used in printed forms, the word "personally" is omitted before "known," notwithstanding the statute says, "such witness must be personally known to the officer." C. C., sec. 1196.

In the book of which this is a successor the word "personally" was inserted before "known" in all the forms, not because the statute required it, but because the person acknowledging ought to be "personally" known to the officer; and, it so, then it would seem that the certificate ought to say so. But as this book was written to be sold, the compiler's preferences should not govern, except when his preference is essential. (See notes to Form No. 99. Also, see preliminary matter to Form No. 990.)

### No. 120.—Acknowledgment before Commissioner—Attorney-in-Fact.

STATE OF *Nevada*, }  
County of *Storey*. } ss.

On this *second* day of *September*, one thousand eight hundred and *ninety-five*, before me, *Charles R. Spencer*, a Commissioner of Deeds for the State of *California*, duly appointed, commissioned, and sworn, and residing in the said State and county, personally appeared *John F. Flemming*, known to me to be the same person whose name is subscribed to the within instrument as the attorney-in-fact of *George S. Sparks*, and the said *John F. Flemming* duly acknowledged to me that he subscribed the name of the said *George S. Sparks* thereto as principal, and his own name as attorney-in-fact.

In witness whereof, *etc.*

NOTE.—See notes to Form No. 99.

### No. 121.—Acknowledgment—Notary Public—Husband and Wife.

[For Nevada, Idaho, Arizona, Oregon, and Wyoming.]

On this *second* day of *November*, one thousand eight hundred and *ninety-five*, before me, *A. Kenney*, a Notary Public for said *Bliss* County, personally appeared *C. Ayres*, and *Mary Ayres*, his wife, known to me to be the same persons whose names are subscribed to the within instrument, who each of them duly acknowledged to me that they, each of them respectively, executed the same.

In witness whereof, *etc.*



**NOTE 1.**—In Nevada the wife must be "personally known to the officer, be made acquainted with the contents, and acknowledge on an examination separate and apart from her husband, that she executed the same freely and voluntarily, without fear or compulsion, or undue influence of her husband, and that she does not wish to retract the same." Gen. Stats., sec. 2591.

**NOTE 2.** In Idaho the acknowledgment of a married woman to an instrument purporting to be executed by her, must not be taken unless she is made acquainted by the officer with the contents of the instrument on an examination without the hearing of her husband; nor certified, unless she thereupon acknowledges to the officer that she executed the instrument, and that she does not wish to retract such execution. Rev. Stats., sec. 2956.

**NOTE 3.**—In Arizona, in effect, the same as in Nevada. Rev. Stats., sec. 2583.

**NOTE 4.**—In Wyoming the same as in Nevada. Rev. Stats., secs. 8, 11, 14, 2784.

**NOTE 5.**—In Oregon a married woman residing in the State shall join with her husband in a deed of conveyance of real property situated within the State, and shall acknowledge "that she executed such deed freely and voluntarily." If she is not residing in the State, and joins in the conveyance of real estate in the State, she acknowledges the same as if she were sole. Hill's Annotated Laws, p. 1861.

## No. 122. — Acknowledgment — Notary Public — Married Woman.

STATE OF *Colorado*, }  
County of *Arapahoe*. } ss.

On this *first* day of *June*, one thousand eight hundred and *ninety-five*, before me, *Edward Brown*, a Notary Public in and for the County of *Arapahoe*, State of *Colorado*, personally appeared *Rebecca Snow*, wife of *Joseph Snow*, known to me to be the person whose name is subscribed to the within instrument, described as a married woman; and upon examination by me privily and apart from her husband, and after having the same fully explained to her, she, the said *Rebecca Snow*, acknowledged said instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

In witness whereof, *etc.*

**NOTE.**—In Arizona and Colorado, when the homestead is conveyed by a married woman, she makes a special acknowledgment. Arizona—Rev. Stats., sec. 2583; Colorado—Mills' Rev. Stats., secs. 442, 2137.

## 123.—Certificate of Incorporation.

### ARTICLES OF INCORPORATION OF THE BALD MOUNTAIN EXTENSION MINING COMPANY.

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming a Corporation, under the laws of the State of *California*.

And we hereby certify: First. That the name of said Corporation is *The Bald Mountain Extension Mining Company*.

Second. That the purposes for which it is formed are to carry on the business of mining for gold in the County of *Sierra*, State of *California*.

Third. That the place where its principal business is to be transacted shall be *the town of Downieville, County of Sierra*.

Fourth. That the term for which it is to exist is *fifty* years from and after the date of its incorporation.

Fifth. That the number of its Directors shall be *five*, and that the names and residence of those who are appointed for the first year are:

NAMES.

RESIDENCES.

*Samuel B. Davidson, [and four others]. Downieville, Sierra County.*

Sixth. That the amount of the capital stock of this corporation shall be *five million (5,000,000)* dollars, divided into *fifty thousand (50,000)* shares, of the par value of *one hundred (100)* dollars each.

Seventh. That the amount of said capital stock which has been actually subscribed is *five million (5,000,000)* dollars, and the following are the names of the persons by whom the same has been subscribed, to wit:

NAMES OF SUBSCRIBERS.

NO. OF SHARES.

AMOUNT.

*Samuel B. Davidson, [and four others]. 10,000. \$1,000,000.*

In witness whereof, we have hereunto set our hands and seals, this *twentieth* day of *May*, one thousand eight hundred and *ninety-four*.

*SAMUEL B. DAVIDSON, [and four others].*

(Signed and sealed.)

STATE OF *California*, }  
County of *Sierra*. } ss.

On this *twentieth* day of *May*, in the year one thousand eight hundred and *ninety-four*, before me, *Henry Briggs*, a Notary Public in and for said county, residing therein, duly commissioned and sworn, personally appeared *Samuel B. Davidson [and four others]*, personally known to me to be the persons whose names are subscribed to the within instrument, and they each duly acknowledged to me that they executed the same.

In witness whereof, etc.

NOTE 1.—In California corporations for profit may have not less than five nor more than eleven directors. A majority of them must be citizens of the State. There appears to be no prohibition respecting age or sex. Corporations not organized for profit may have not less than five nor more than fifty directors or trustees. C. C., secs. 290-305 *et seq.*

NOTE 2.—In Nevada not less than three trustees. Gen. Stats., sec. 803 *et seq.*

NOTE 3.—In Idaho not less than five or more than eleven trustees. A majority must be residents of the State. Rev. Stats., sec. 2579.

NOTE 4.—In Montana three or more. C. C., sec. 392.

NOTE 5.—In Utah not less than three trustees nor more than twenty-five, one-third of whom must be residents of Utah. Comp. Laws, sec. 2267 *et seq.* As amended in 1890. Stats., p. 72.

NOTE 6.—In North Dakota three or more persons may form a corporation. One-third must be residents; directors not less than three nor more than eleven. Comp. Laws, secs. 3289-2911.

NOTE 7.—In South Dakota (see North Dakota generally; but any nine or more persons of full age, may form building and loan associations. Directors not less than five nor more than thirteen.) Stats. 1893, p. 10.

NOTE 8.—In Wyoming three or more persons may form, and the directors shall be not less than three nor more than nine. Rev. Stats., p. 193.

NOTE 9.—In Washington two or more may incorporate; not less than two trustees. A majority must be citizens of the United States and residents of the State. Hill's Stats., sec. 1502, Vol. IV.

NOTE 10.—In Oregon two or more persons may incorporate, and must reside in the State. Hill's Laws, sec. 3217 *et seq.*

NOTE 11.—In Colorado not less than three nor more than thirteen directors. Hill's Stats., sec. 481, p. 622.

NOTE 12.—In Arizona there are no limitations as to number or qualifications of directors. Rev. Stats., sec. 232 *et seq.*

### No. 124.—Certificate of Re-Incorporation.

#### CERTIFICATE OF THE ELECTION OF "THE BANK OF CALIFORNIA" TO CONTINUE ITS EXISTENCE UNDER THE CIVIL CODE OF THE STATE OF CALIFORNIA.

We, the undersigned directors (trustees) of "*The Bank of California*," and the secretary of the same, do hereby certify:

That "*The Bank of California*" was a corporation existing on the first day of January, one thousand eight hundred and seventy-three, formed under the laws of this State, and is still existing.

That a meeting of the directors (trustees) of said corporation, duly called, was held on the *24th day of November, one thousand eight hundred and seventy-five, at twelve o'clock noon, at the banking house of said bank, in the City and County of San Francisco, State of California.*

That, at said time and place, all of the directors (trustees) of said corporation (being the undersigned, except said secretary) assembled as a board of directors (trustees) of said corporation.

That, then and there, the said directors (trustees), by a unanimous vote, made an election and resolved unanimously to continue the existence of said corporation, "*The Bank of California*," under the provisions of the Civil Code of the State of California applicable thereto (Approved March 21st, A. D. 1872), and the statutes amendatory thereof and supplementary thereto.

And we do further certify, that said election and action of said directors (trustees) were made and had upon the written consent (presented to us at the time and place aforesaid) of the stockholders of said corporation, representing a majority of the capital stock thereof.

In witness whereof, *etc.*

(Signed by all the directors, and acknowledged before notary, and countersigned by the secretary, and seal affixed.)

Cal. C. C., sec. 287. Applicable in all places where such certificates are allowed by statute.

### No. 125.—Articles of Incorporation of Railroad Company.

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, have this day associated ourselves together for the purpose of



incorporating, under the laws of the State of California, a corporation, to be known by the corporate name of *Santa Rosa Branch of the North Pacific Coast Railroad Company*.

And we hereby certify, that the objects for which this corporation is formed, are to construct, conduct, maintain, and own a narrow-gauge railroad (and telegraph line in connection therewith), from the City of Santa Rosa, in the County of Sonoma, and State of California, to a point at or near a place called *Freestone*, in said county and State, and distant from the said City of Santa Rosa about twelve miles, which is the estimated length of said railroad and telegraph line; and at or near said place called *Freestone*, to connect with the *North Pacific Coast Railroad*.

That its principal place of business shall be the City of *San Francisco*, in said State of California.

That the time of its existence shall be *fifty* years from and after the date of its incorporation.

That the number of its directors shall be *five*, and that the names of those who shall be directors, and are appointed to manage its affairs for the first year, are:

NAME.	RESIDENCE.
<i>John F. Kessing [and the others].</i>	<i>San Francisco, Cal.</i>

That the capital stock of this corporation shall be *two hundred and fifty thousand dollars*, divided into *twenty-five hundred shares*, of the par value of *one hundred dollars* each, all in gold coin of the United States.

That the amount of capital stock actually subscribed, is the sum of *thirteen thousand and five hundred dollars*, and that the same has been subscribed by the following persons:

NAMES.	NO. OF SHARES.	AMOUNT.
<i>John F. Kessing [and the others].</i>	<i>25</i>	<i>\$2500</i>

And that at least ten per cent. thereof has been paid in to the Treasurer of this intended corporation, duly elected by the said subscribers.

In witness whereof, *etc.*

(Signed and acknowledged as in the preceding.)

#### No. 126.—Certificate of Stock—Bond of Indemnity—Lost Stock.

WHEREAS, Certificate No. *11,502* of the *Consolidated Virginia Mining Co.*, dated *May 3d, 1894*, for *twenty* shares, in the name of *John Brown*, has been lost. Now, we, the undersigned, are bound unto the *Consolidated Virginia Mining Company* in the sum of *one thousand dollars*, in consideration of the issuance of a new certificate of stock for *twenty (20)* shares of the capital stock of said company, in place of said certificate lost or mislaid. And we agree to hold the said *Consolidated Virginia Mining Com-*

pany harmless and free from all loss, damage, counsel fees, and costs incurred, or to be incurred, by reason of said loss, and in case said certificate of stock should be hereafter presented to said company for transfer.

Witness our hands, *etc.*

#### No. 127.—Certificate of Stock—Power of Attorney—Transfer of.

KNOW ALL MEN BY THESE PRESENTS: That I, *A. B.*, for value received, have bargained, sold, and assigned, and by these presents do bargain, sell, and assign unto *L. M.* the following described stock, to wit: [*describe the kind of stock*] unto me belonging, and held by certificate No. *888*, in my name, and hereunto annexed, and do hereby constitute and appoint *N. M.*, the Secretary of said company, my true and lawful attorney, irrevocably, for me and in my name and stead, to assign and transfer the said stock unto the said *L. M.*, and, for that purpose, to make and execute the necessary acts of assignment and transfer, and an attorney, or attorneys, under him for that purpose, to make, and substitute, and to do all other lawful acts requisite for effecting the premises, hereby ratifying and confirming the same.

In witness whereof, *etc.*

#### No. 128.—Certificate—Proxy to Vote.

KNOW ALL MEN BY THESE PRESENTS: That I, *A. B.*, of *San Francisco*, do hereby constitute and appoint *G. C.* to be my lawful attorney, substitute, and proxy, for me and in my name, to vote on all the stock held by me in the *Tiger Mining Company*, and at any election for directors, as fully as I might or could do, were I personally present at such election.

In witness whereof, *etc.*

*A. B.* [SEAL.]

#### No. 129.—Certificate—Incorporation of Church Under Statute.

KNOW ALL MEN: That we, the undersigned, have this day voluntarily associated ourselves together for the purpose of incorporating under the laws of the State of *California*, and in pursuance of the purposes for which we have been elected, as hereinafter set forth, a religious corporation to be known as *St. Stephen's Episcopal Mission*.

And we certify, that the objects for which this corporation is formed are: To establish a mission church in the *City and County of San Francisco*, and in connection therewith suitable and customary organizations, for the purpose of public worship and religious training, according to the rules and discipline of the *Episcopal Church of the United States of America*, under the supervision of the *Bishop of the Diocese of California*, to take charge of the

church building, estate, and property, and the affairs of the temporalities thereof;

That the principal place of business of this corporation shall be in the *City and County of San Francisco, State of California*;

That the term of the incorporation shall be *fifty* years;

That the number of trustees who shall have the management of its affairs as aforesaid, shall be, and the names of the trustees elected for the first year, are:

NAMES.

RESIDENCE.

*S. L. Jones [and others].*

*San Francisco, Cal.*

That the said trustees were duly elected at a meeting of the members of said *Mission*, duly convened and held at the *northeast corner of Fulton and Webster streets*, for the purpose, among other things, of electing trustees to take charge and management of its property, temporalities, and affairs, and to form this incorporation. That a majority of said members were then and there present, and voted, at such election, for the above-named trustees, as is more particularly set forth in the certificate and verification by the officers who conducted the election, hereto annexed and made part of these articles.

In witness whereof, we have hereunto set our hands and seals, this *eleventh* day of *May*, A.D. 1894.

*S. L. JONES, [SEAL.]*  
[and others].

This is to certify, that at a meeting of the members of *St. Stephen's Episcopal Mission*, duly convened for the purpose hereinafter set forth, held at the *northeast corner of Fulton and Webster streets*, on *Monday*, the *tenth* day of *April*, A.D. 1894, a majority of said members being then and there present, who voted at said election.

The *Rev'd Edgar J. Lion* was requested to preside, and *Mr. James S. Mackenzie* to act as secretary, with which requests they respectively complied.

The meeting then proceeded to the election of *five* trustees, to take charge and management of the property, temporalities, and affairs of the *St. Stephen's Episcopal Mission*, and to form an incorporation under the laws of the *State of California*, in furtherance of the object for which the *Mission* is founded.

The following trustees were then duly elected, viz:

*S. L. Jones [and others],*

all residents of the *City and County of San Francisco, State of California*.

*EDGAR J. LION*, President.

*JAS. S. MACKENZIE*, Secretary.

*San Francisco, May 10th, A. D. 1895.*



CITY AND COUNTY OF *San Francisco*, ss.

*Edgar L. Lion* and *James S. Mackenzie*, being duly sworn, depose and say, each for himself, that he was an officer conducting the election referred to in the foregoing certificate; that he has read said certificate, and knows the contents thereof, and that the same is true of his own knowledge.

(Subscribed and sworn to.)

STATE OF *California*,  
City and County of *San Francisco*. } ss.

On this *eleventh* day of *May*, in the year one thousand eight hundred and *ninety-four*, before me, *Samuel Herman*, a Notary Public, personally appeared *S. L. Jones*, *W. H. L. Barnes*, *B. E. Babcock*, *Thomas Menzies*, and *E. B. Holmes*, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

Witness my hand, etc.

## No. 130.—Clerk's Certificate to Papers on File.

OFFICE OF THE COUNTY CLERK  
Of the City and County of *San Francisco*. } ss.

I, *W. A. Stuart*, County Clerk of the City and County of *San Francisco*, in the State of *California*, and ex officio Clerk of the Superior Court of the said city and county, and State aforesaid, hereby certify that I have compared the foregoing copy with the original *complaint* in the above entitled action, filed in my office on the *twenty-fourth* day of *March*, 1894, and that the same is a full, true, and correct copy of such original, and of the whole thereof.

Witness my hand, etc.

## No. 131.—County Clerk's Certificate.

STATE OF *California*,  
City and County of *San Francisco*. } ss.

I, *W. A. Stuart*, County Clerk of the City and County of *San Francisco*, State of *California*, and Clerk of the Superior Court, do hereby certify that the foregoing is a full, true, and correct copy of an *answer* [or other instrument], with the indorsements thereon, remaining on file in this office.

Witness my hand, etc.

## No. 132.—Clerk's Certificate of Order Entered in Minutes.

OFFICE OF THE COUNTY CLERK  
Of the City and County of *San Francisco*. } ss.

I, *W. A. Stuart*, County Clerk of the City and County of *San Francisco*, and ex officio Clerk of the Superior Court thereof, do hereby certify the foregoing to be a full, true, and correct copy of

*the order appointing John Ring administrator, with will annexed, of the estate of John Doe, deceased, duly made and entered upon the minutes of the said Court, and that I have compared the same with the original; that it is a correct transcript therefrom, and of the whole thereof.*

Witness my hand, *etc.*

**No. 133.—Certified Copy of Decree.**

OFFICE OF THE COUNTY CLERK  
Of the *City and County of San Francisco.* } ss.

I, *W. A. Stuart*, County Clerk of the *City and County of San Francisco*, State of *California*, and *ex officio* Clerk of the Superior Court of said *City and County*, hereby certify the foregoing to be a full, true, and correct copy of the original decree in the above entitled cause, filed in my office on the *thirtieth* day of *November, 1894*, and that the same was entered of record on the *fourth* day of *December, 1894*, in Judgment Book *H*, page *297*.

Witness my hand, *etc.*

**No. 134.—Clerk's Certificate of Office.**

STATE OF *California*,  
County of *San Mateo.* } ss.

I, *H. Walker*, County Clerk of the County of *San Mateo*, State of *California*, and Clerk of the Superior Court of said *San Mateo* County (which is a Court of Record), do hereby certify that *Geo. W. Fox*, whose name is subscribed to the annexed instrument, was, at the date of the same, and is now, a *Notary Public* in and for said *San Mateo* County, duly *commissioned* and qualified, and authorized by law to *administer oaths and take acknowledgments of instruments*, and full faith and credit are due to all his official acts as such. And I do further certify that the signature attached to the annexed instrument *is his proper signature and is genuine.*

In witness whereof, *etc.*

**No. 135.—Clerk's Certificate of Election.**

UNITED STATES OF AMERICA.

STATE OF *California*,  
*City and County of San Francisco.* } ss.

I, *Wm. A. Stuart*, County Clerk, in and for the *City and County of San Francisco*, in the State of *California*, do hereby certify, that a *general* election, held in and for said *City and County of San Francisco*, on the *seventh* day of *September*, one thousand eight hundred and *ninety-four*, *Peter J. White* was duly elected to the office of *Sheriff* in and for said *County*, as appears by the official returns of said election, and the statement of votes cast, now on file in my office.

In witness whereof, *etc.*

## OATH.

STATE of *California*, }  
 City and County of *San Francisco*. } ss.

I do solemnly swear that I will support the Constitution of the United States, and the *Constitution* of the *State of California*, and that I will faithfully discharge the duties of *Sheriff in and for the City and County of San Francisco*, according to the best of my ability. So help me God.

(Subscribed and sworn to:)

## No. 136.—Certificate to Signature.

STATE of *California*, }  
 County of *San Mateo*. } ss.

I. H. Walker, County Clerk of the County of *San Mateo*, State of *California*, hereby certify that *Geo. W. Fox*, before whom the annexed instrument was made, acknowledged, and executed, and who has hereunto subscribed his name, was, at the time of so doing, a *Notary Public* in and for the said *San Mateo* County, duly commissioned and sworn, and that his signature thereto is genuine. I further certify that the said instrument, a *deed*, is made, acknowledged, and executed in accordance with the laws of the *State of California*.

In witness whereof, *etc.*

## No. 137.—Certificate of Marriage.

THIS CERTIFIES that the writ of Holy Matrimony was celebrated between *James W. Young*, of *Sacramento, State of California*, and *Matilda M. Skelly*, of *Redwood City*, County of *San Mateo*, on the *twenty-fifth* day of *December*, one thousand eight hundred and *ninety-four*, at the *City and County of San Francisco*, by me, *James C. Pennie*, Justice of the Peace of said city and county.

## No. 138.—Certificate of Marriage.

THIS CERTIFIES that on the *twenty-fifth* day of *January*, in the year of our Lord *1881*, *John Young* and *Lucy Adams* were by me united in marriage, at *Unitarian Church, San Francisco*, according to the laws of the *State of California*.

## No. 139.—Certificate of Sale of Real Estate on Execution.

[TITLE OF COURT AND CAUSE.]

I, *Thomas Desmond*, Sheriff of the *City and County of San Francisco*, do hereby certify, that by virtue of an execution in the above cause, attested the *tenth* day of *August, 1894*, by which I was commanded to make the amount of *two thousand five hundred*



*and sixty-four dollars and forty-eight cents, in United States gold coin, to satisfy the judgment in this action, with interest thereon and costs, out of the personal property of the above defendants; and if sufficient personal property could not be found, then out of the real property belonging to the said defendants, on the tenth day of May, 1894, or at any time thereafter, as by the said writ, reference being thereunto had, more fully appears: I have levied on and this day sold, at public auction, according to the statute in such cases made and provided, to Wm. J. Heney, who was the highest bidder, for the sum of two thousand five hundred and forty-one (2541) dollars, which was the whole price paid by him for the same, the real estate described as follows, to wit:*

[Description.]

That the price of each distinct lot and parcel was as follows: *All the above-described property, in one parcel, for the said sum of two thousand five hundred and forty-one dollars, gold coin of the United States. And that the said real estate is subject to redemption in six months, pursuant to the statute in such cases made and provided.*

Given under my hand, *etc.*

NOTE.—If sale was by a Commissioner, the same form, with the name of Commissioner instead of Sheriff. See note to No. 140.

## No. 140.—Certificate of Sale on Foreclosure.

[TITLE OF COURT AND CAUSE.]

I, *P. J. White*, Sheriff of the *City and County of San Francisco*, in the State of *California*, do hereby certify, that under and by virtue of an order of sale, issued out of the Superior Court of the *City and County of San Francisco*, in said State of *California*, in the action of *Richard F. Ryan*, plaintiff, against *James Mee*, defendant, rendered on the *sixth* day of *November, 1894*, and entered on the said *sixth* day of *November, 1894*, duly attested the *seventh* day of *November, 1894*, and to me, as such Sheriff, duly directed and delivered, whereby I was commanded to sell the property hereinafter described, according to law, and to apply the proceeds of such sale towards the satisfaction of the judgment in said action, amounting to the sum of *five thousand dollars, gold coin of the United States*, with interest and costs of suit, I duly levied on, and on the *first* day of *December, 1894*, at 12 o'clock, noon, in front of the *City Hall*, in the *City and County of San Francisco*, I duly sold at public auction, according to law, and after due and legal notice, to said plaintiff, *Richard F. Ryan*, who made the highest and best bid therefor, at such sale, for the sum of *five thousand two hundred and sixty-two dollars, in gold coin of the United States*, which was the whole sum paid by him for the real estate in said order of sale, described as follows, to wit:

[Description.]

And I do hereby further certify, that the said property was, by direction of the said *James Mee*, sold in *one* parcel, and that the sum of *five thousand two hundred and sixty (5260) dollars*, in *United States gold coin*, was the highest bid made, and the whole price paid therefor, and that the same is subject to redemption in *six months*, pursuant to the statute in such cases made and provided.

Given under my hand, *etc.*

NOTE.—Substitute *Commissioner* for Sheriff when necessary. It is a mistake to think (as some practitioners do), that a recitation of the facts of the Commissioner's appointment, *etc.*, gives weight to the instruments he executes. It does nothing of the kind. His authority depends upon the order appointing him, and that is always a Court record.

#### No. 141.—Certificate of Admission to Practice Law.

In the Superior Court of the County of *Sierra*, State of *California*.

BE IT REMEMBERED: That *Samuel B. Davidson*, Esquire, was, on motion first made to the Court in this behalf, by *Peter Von-clief, Esq.*, duly admitted and licensed as an Attorney and Counselor at Law of the *Superior Court of the County of Sierra*, in the *State of California*, on the *third day of June*, in the year of our Lord one thousand eight hundred and *ninety-four*.

In witness whereof, I, *Henry Strange*, County Clerk of *Sierra* County, and ex officio Clerk of the Superior Court of said county, have hereunto set my hand and affixed the seal of said Court at *Downieville*, this *third day of June*, in the year of our Lord one thousand eight hundred and *ninety-four*.

INDORSED.

STATE OF *California*, }  
County of *Sierra*. } ss.

I do solemnly swear that I will support the Constitution of the United States and the *Constitution of the State of California*, and that I will faithfully discharge the duties of an Attorney and Counselor at Law of the *Superior Court of the County of Sierra*, State of *California*, to the best of my ability.

(Subscribed and sworn to.)

### CORONER.

#### No. 142.—Coroner's Certificate of Death.

OFFICE OF THE CORONER OF THE  
*City and County of San Francisco, State of California.*

I, *James McGinn*, Coroner of the *City and County of San Francisco*, State of *California*, do hereby certify that I held an inquisition upon the body of *C. D. O'Donnell*, a native of *Ireland*, aged *forty-four* years, at *No. 636 Washington street*, on the *tenth day of July, 1894*. Verdict of the jury: Death from *sunstroke*.

And I further certify, that *I caused to be interred his body at Laurel Hill Cemetery, in this city and county, on the twelfth day of July, 1894.*

(Dated.)

### No. 143.—Coroner's Jury—Inquisition by.

STATE OF California, }  
City and County of San Francisco. } ss.

In the Matter of the Inquisition upon } Before James McGinn,  
the body of A. B., deceased. } Coroner.

We, the undersigned, the jurors summoned to appear before James McGinn, the Coroner of the City and County of San Francisco, at [state place], on the first day of May, 1894, to inquire into the cause of the death of A. B. [or, of a person found drowned in the Bay of San Francisco; or, found lying dead in the street; or, as the case may be, whose name is unknown], having been duly sworn according to law, and having made such inquisition, after inspecting the body, and hearing the testimony adduced, upon our oaths, each and all do say, that we find the deceased was named A. B., was a native of Ireland, aged about forty years; that he came to his death on the first day of May, 1894, in this county, by drowning, having been found in the Bay of San Francisco, at or near the Washington Street Wharf, and whether the same was accidental or intentional we have no means of knowing [or, by poison administered willfully by his own hand; or, by the hand of, or by the means or instigation, of some other person, to the jury unknown; or, and we further find, that we believe C. D. to be the person by whose act the death of the said A. B. is occasioned—stating the facts, as the case may be].

All of which we duly certify by this inquisition, in writing, by us signed, this second day of May, 1894.

[All sign.]

NOTE.—The verdict of Coroner's Jury must be signed by each and every juror. See sec. 1514, Penal Code. Duties of Coroners prescribed by secs. 1510 to 1519, Penal Code, and secs. 4285 to 4293, Political Code.

### No. 144.—Coroner's Subpœna.

STATE OF California, }  
City and County of San Francisco. } ss.

THE PEOPLE OF THE STATE OF California SEND GREETING:

To Robert Smith and John Roe: We command you, that, all and singular business and excuses being laid aside, you be and appear before the undersigned, Coroner of the City and County of San Francisco, State of California, at No. 863 Market Street, on the thirty-first day of December, 1894, at ten o'clock A. M., then and there to testify and give evidence in a certain inquisition now pending before said Coroner; and herein fail not, or answer the contrary at your peril.

Given under my hand, etc.



**No. 145.—Coroner's Summons.**

STATE OF *California*,  
*City and County of San Francisco.* } ss.

THE PEOPLE OF THE STATE OF *California* SEND GREETING:

To *John Smith*: We command you, that, all and singular business and excuses being laid aside, you be and appear before the undersigned, Coroner of the *City and County of San Francisco, State of California*, at *No. 863 Market Street*, on the *thirty-first day of December, 1894*, at *ten o'clock A. M.*, then and there to serve as a juror in a certain inquisition now pending before said Coroner; and herein fail not, or answer the contrary at your peril.

Given under my hand, *etc.*

**No. 146.—Coroner's Warrant.**

STATE OF CALIFORNIA,  
*City and County of San Francisco.* } ss.

THE PEOPLE OF THE STATE OF *California* to any Sheriff, Constable, Marshal, or Policeman in this State:

An inquisition having been this day found by a Coroner's jury, before me, stating that *Albert G. Roe* has come to his death by the act of *John Doe*, by criminal means: You are therefore commanded forthwith to arrest the above named *John Doe*, and take him before the nearest or most accessible magistrate in this county.

Given under my hand, *etc.*

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**DEEDS.**


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**No. 147.—Deed of Administratrix.**

THIS INDENTURE, made the *twentieth* day of *January*, eighteen hundred and *ninety-four*, at the *City and County of San Francisco, State of California*, by and between *Mary Jones*, the duly appointed, qualified, and acting *Administratrix of the Estate of Thomas Jones*, deceased, late of the *city and county aforesaid*, the party of the first part, and *Stewart S. Wright*, of the *same place*, the party of the second part, witnesseth:

That whereas, on the *seventh* day of *December*, eighteen hundred and *ninety-four*, the *Superior Court of the City and County of San Francisco, State of California*, made an order of sale authorizing the said party of the first part to sell certain real estate of the said *Thomas Jones*, deceased, situated in said *City and County of San Francisco, State of California*, and specified and particularly described in said order of sale, either in one par-

cel or in subdivisions, as the said party of the first part should judge most beneficial to said estate.

And which said order of sale, now on file and of record in the said Superior Court, is hereby referred to and made a part of this indenture.

And whereas, under and by virtue of said order of sale, and pursuant to legal notices thereof, the said party of the first part, on the *fourth* day of *January*, eighteen hundred and *ninety-four*, at the *auction salesroom of John Middleton*, in said *city and county*, between the hours of nine o'clock in the morning and the setting of the sun on the same day, to wit: at *twelve o'clock M.*, offered for sale in *one parcel* (judging it most beneficial to said estate), at *public auction*, and subject to confirmation of said *Superior Court*, the said real estate, situated in the said *city and county*, and specified and described in said order of sale as aforesaid, and at such sale the said party of the second part became the purchaser of the *whole* of said real estate hereinafter particularly described, for the sum of *six thousand five hundred and seventy-five* dollars, *United States gold coin*, he being the highest and best bidder, and that being the highest and best sum bid.

And whereas, the said Superior Court, upon the due and legal return of her proceedings under the said order of sale, made by the said party of the first part on the *fifth* day of *January*, eighteen hundred and *ninety-four*, after making the said sale, and upon due and legal notice of at least ten days, given as the law requires, did, on the *eighteenth* day of *January*, eighteen hundred and *ninety-four*, make an order confirming said sale, and directing conveyances to be executed to the said party of the second part; a certified copy of which order of confirmation was recorded in the office of said County Recorder of said *city and county*, within which the said land sold is situated, on the *nineteenth* day of *January*, eighteen hundred and *ninety-four*, which said order of confirmation now on file and of record in said Recorder's office, are hereby referred to and made a part of this indenture.

Now, therefore, the said *Mary Jones, administratrix of the estate of said Thomas Jones*, deceased, as aforesaid, the party of the first part, pursuant to the order last aforesaid, of the said Superior Court, for and in consideration of the sum of *six thousand five hundred and seventy-five (6575)* dollars, *United States gold coin*, to her in hand paid by the said party of the second part, receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, and estate of the said *Thomas Jones*, deceased, at the time of his death, and also all the right, title, and interest that the said estate, by operation of law or otherwise, may have acquired, other than, or in addition to, that of said intestate, at the time of his death, in and to all that certain lot, piece, or parcel of land situate, lying, and being in said *City*

and County of *San Francisco*, State of *California*, and bounded and described as follows, to wit:

[Description.]

Together with the tenements, hereditaments, and appurtenances whatsoever to the same belonging or in anywise appertaining.

To have and to hold, all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part, *administratrix* as aforesaid, has hereunto set her hand and seal, the day and year first above written.

MARY JONES. [L. s.]

*Administratrix of the Estate of Thomas Jones, deceased.*

NOTE 1.—The order of sale need not be recorded in the County Recorder's office, but the order confirming the sale must be. C. C. P., sec. 1719.

NOTE 2.—Deed of executor or administrator very similar, with but slight changes.

### No. 148.—Deed—Simple Form.

I, *James Lick*, of the City and County of *San Francisco*, State of *California*, for and in consideration of the sum of *six thousand dollars*, *United States gold coin*, do by these presents grant, bargain, sell, and convey unto *Horace Jones*, of the same place, all that certain parcel of land situate in the City and County of *San Francisco*, State of *California*, and described as follows:

[Description by metes and bounds.]

To have and to hold the above granted and described premises with all its appurtenances, unto the said *Horace Jones*, his heirs and assigns forever.

In witness whereof, I have hereunto set my hand and seal this *tenth day of September, 1894*.

[Signature.]

NOTE 1.—The foregoing is as effectual to convey a lot of land as any form in the book; but as many lawyers have been so accustomed to the old forms. it is almost impossible for them to accept the change, although the words "grant, bargain, and sell" are about the only words, except proper description, they will examine, even when a deed is offered in evidence; and, besides, they are considered the effectual words, and the long *tenendum* and *habendum* clauses are passed over as surplusage. It is good everywhere, unless a statute is found prescribing a different form.

NOTE 2.—Care should be taken to insert the name of grantee in deed at the time of grantor signing and delivering the same, otherwise the execution is imperfect, and will not vest title unless grantor gives written authority to insert any name one pleases, or subsequently ratifies the act by accepting the purchase price, or something to that effect.

NOTE 3.—In the body of the instrument the names of grantor and grantee in full should be inserted instead of the initials.

NOTE 4.—The description should be filled in with care, as much litigation has arisen from blunders of inexperienced persons in drawing deeds on account of this defect.

NOTE 5.—All deeds must be acknowledged before recording.

NOTE 6.—In California a seal is unnecessary.

### No. 149.—Deed—Bargain and Sale.

THIS INDENTURE, made the *fourteenth* day of *May*, in the year of our Lord one thousand eight hundred and *ninety-four*, between *Isaac B. Holloway*, of *Lakeport*, County of *Lakeport*, State of *Calif-*



fornia, the party of the first part, and *Ichabod H. Thompson*, of *Big Valley*, county aforesaid the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of *fifty* dollars, *gold coin* of the United States, to him in hand paid by the said party of the second part, receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, and convey unto the said party of the second part, and to his heirs and assigns forever:

[Description.]

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold, all and singular, the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof, *etc.*

(Signed, sealed, and delivered).

#### No. 150.—Deed—Bargain and Sale.

THIS INDENTURE, made the *fourteenth* day of *June*, in the year of our Lord one thousand eight hundred and *ninety-four*, between *James W. Robertson*, of the Town of *Snelling*, County of *Merced*, State of *California*, the party of the first part, and *Joseph D. Wigginton*, of said town, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of *four hundred and fifty* dollars, *gold coin* of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, and sell, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain lot and parcel of land, situate in the said Town of *Snelling*, in said County of *Merced*, State of *California*, and bounded and described as follows, to wit:

[Description.]

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

(Signed, sealed, and delivered.)

## No. 151.—Deed of Gift.

THIS INDENTURE, made the *thirty-first* day of *April*, in the year of our Lord one thousand eight hundred and *ninety-four*, between *James A. Clayton*, of the County of *Sierra*, State of *California*, the party of first part, and *William Clayton*, his son, of said county, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the love and affection which the said party of the first part has and bears unto the said party of the second part, as also for the better maintenance, support, protection, and livelihood of the said party of the second part, does by these presents give, grant, alien, and confirm unto the said party of the second part, and to his heirs and assigns forever, all

[Description.]

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion or reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, *etc.*

## No. 152.—Trust Deed.

THIS DEED OF TRUST, made this *sixteenth* day of *June*, eighteen hundred and *ninety-four*, between *John Stark*, of the City and County of *San Francisco*, the party of the first part, and *James De Fremery*, *Robert B. Swain*, and *Alexander Campbell, Senior*, of *San Francisco, California*, parties of the second part, and the *San Francisco Savings Union*, a Corporation, of the third part, witnesseth:

Whereas, the said party of the first part, the said *John Stark*, has borrowed and received of the said *San Francisco Savings Union*, in gold coin of the United States, the sum of *two thousand (2,000)* dollars, and has agreed to repay the same on the *sixteenth* day of *June*, eighteen hundred and *ninety-four*, to the *San Francisco Savings Union*, or its order, at its office in *San Francisco*, in like gold coin, with interest, according to the terms of a certain promissory note, of even date herewith, executed and delivered therefor, by the said *John Stark*.

Now, this indenture witnesseth, that the said party of the first part, in consideration of the aforesaid indebtedness to the *San Francisco Savings Union*, and of one dollar to him in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, and for the purpose of securing the payment of said promissory note, and of any sum or sums of money, with interest thereon, that may be paid or advanced by, or may otherwise be

due to the parties of the second or third part, under the provisions of this instrument, *does* by these presents grant, bargain, sell, convey and confirm unto the parties of the second part in *joint tenancy*, and to the *survivor of them*, their successors and assigns, the piece or parcel of land situate in the *City and County of San Francisco*, State of *California*, described as follows:

[Description.]

And also, all the estate and interest, homestead, or other claim or demand, as well in law as in equity, which the said party of the first part now has or may hereafter acquire of, in, and to said premises, with the appurtenances.

To have and to hold the same to the parties of the second part, as *joint tenants (and not as tenants in common)*, with *right of survivorship as such*, and to their successors and assigns (said parties of the second part and their successors being hereby expressly authorized to convey, subject to the trusts herein expressed, the lands above described), upon the trusts and confidences hereinafter expressed, to wit:

First. During the continuance of these trusts, the party of the third part and the parties of the second part, their successors and assigns are hereby authorized to pay, without previous notice, all taxes, assessments, and liens, now subsisting, or which may hereafter be imposed by national, State, county, city, or other authority, upon said premises, and on the money so borrowed as aforesaid, to whomsoever assessed, and all or any incumbrances now subsisting, or that may hereafter subsist thereon, which may in their judgment affect said premises or these trusts, at such times as in their judgment they may deem best, or in their discretion, for the benefit and at the expense of said party of the first part, to contest the payment of any such taxes, assessments, liens, or incumbrances, or defend any suit or proceeding instituted for the enforcement thereof; and in like manner to prosecute or defend any suit or proceeding that they may consider proper to protect the title to said premises, and these trusts shall be and continue as security to the party of the third part, and their assigns, for the repayment, in *gold coin* of the United States, of the moneys so borrowed by the said *John Stark*, and the interest thereon; and of all amounts so paid out, and costs and expenses incurred as aforesaid, whether paid by the parties of the second or third part, with interest on such payments at the rate of *two* per cent. per month until final repayment.

Secondly. In case the said *John Stark* shall well and truly pay, or cause to be paid, at maturity, in *gold coin* as aforesaid, all sums of money so borrowed as aforesaid, and the interest thereon, and shall upon demand repay or deposit all other moneys secured or intended to be secured hereby, and also the reasonable expenses of this trust, then the parties of the second part, *the survivor of them*, their successors and assigns, shall reconvey



all the estate in the premises aforesaid to them by this instrument granted unto said *John Stark*, his heirs and assigns, at his request and cost.

Thirdly. If default shall be made in the payment of any of said sums of principal or interest, when due, in the manner stipulated in said promissory note, or in the reimbursement of any amounts herein provided to be paid, or of any interest thereon, then the said parties of the second part, or *the survivor of them*, their successors or assigns, on application of the party of the third part, or their assigns, shall sell the above granted premises, or such part thereof as, in their discretion, they shall find it necessary to sell, in order to accomplish the objects of these trusts, in the manner following, namely:

They shall first publish the time and place of such sale, with a description of the property to be sold, at least *twice* a week for *three* weeks, in some newspaper published in the *City and County of San Francisco*, and may from time to time postpone such sale by publication; and, on the day of sale so advertised, or to which such sale may be postponed, they may sell the property so advertised, or any portion thereof, at public auction, in any county where any part of said property may be situated, to the highest cash bidder; and the holder or holders of said promissory note, their agent or assigns, or *any member or Director of said San Francisco Savings Union*, may bid and purchase at such sale.

And the parties of the second part, or *the survivor of them*, *their successors* or assigns, shall establish as one of the conditions of such sale, that all bids and payments for said property shall be made in like *gold coin* as aforesaid, and upon such sale they shall make, execute, and, after due payment made, shall deliver to the purchaser or purchasers, his or their heirs and assigns, a deed or deeds of grant, bargain, and sale of the above granted premises, and out of the proceeds thereof shall pay:

First. The expenses thereof, together with the reasonable expenses of this trust, including counsel fees of *two hundred (200)* dollars in *gold coin*, which shall become due upon any default made by the *John Stark* in any of the payments aforesaid.

Second. All sums which may have been paid by the said *San Francisco Savings Union*; or the parties of the second part, their successors or assigns, or the holders of the note aforesaid, and not reimbursed, and which may then be due, whether paid on account of incumbrances or insurance, as aforesaid, or in the performance of any of the trusts herein created, and with whatever interest may have accrued thereon; next the amount due and unpaid on said promissory note, with whatever interest may have accrued thereon; and lastly, the balance or surplus of such proceeds, if any, to said *John Stark*, his heirs or assigns.

And in the event of a sale of said premises, or any part thereof, and the execution of a deed or deeds therefor, under these

trusts, then the recitals therein of default and publication shall be conclusive proof of such default and of the due publication of such notice; and any such deed or deeds, with such recitals therein, shall be effectual and conclusive against the said party of the first part, his heirs or assigns, and all other persons; and the receipt for the purchase money contained in any deeds executed to the purchaser, as aforesaid, shall be a sufficient discharge to such purchaser from all obligation to see to the proper application of the purchase money, according to the trusts aforesaid.

In witness whereof, *etc.*

NOTE.—The above Trust Deed is used instead of a Mortgage by some corporations loaning money. It conveys the title, and need not be foreclosed; nor is there a time for redemption. All these points have been decided by the Supreme Court of the State of California.

### No. 153.—Reconveyance of Trust Premises.

KNOW ALL MEN BY THESE PRESENTS: That whereas, *all* the indebtedness secured to be paid by the Deed of Trust executed by *John Stark*, to us, *James De Fremery, Robert B. Swain, and Alex. Campbell, Sr.*, of the *City and County of San Francisco*, State of *California*, bearing date the *sixteenth* day of *June, 1894*, and recorded in the office of the Recorder in and for the *City and County of San Francisco*, State of *California*, in Liber 746 of Deeds at page 496 *et seq.*, has been paid.

Now, therefore, in consideration of one dollar to us paid by said *John Stark*, receipt whereof is hereby acknowledged, we, the said *James De Fremery, Robert B. Swain, and Alex. Campbell, Sr.*, do by these presents grant, remise, release, and reconvey to him all the estate and interest derived to us by or through said Deed of Trust, in the lands situated in the *City and County of San Francisco*, and described as follows:

[Description.]

Being the same land and premises described in the aforesaid Deed of Trust.

Together with the tenements, hereditaments, and appurtenances thereto belonging.

To have and to hold the same without any warranty unto the said *John Stark*, his heirs, and assigns forever.

In witness whereof, *etc.*

### No. 154.—Guardian's Deed.

THIS INDENTURE, made the *eighth* day of *April*, eighteen hundred and *ninety-four*, at the *City and County of San Francisco*, State of *California*, by and between *Mary Jones*, the duly appointed, qualified, and acting guardian of the persons and estates of *William Jones, Arthur Jones, Kate Jones, Charlotte Jones, Emma Jones, and Ernest Jones*, minors, the party of the first part, and



*Benjamin Rush*, of the said city and county, the party of the second part, witnesseth:

That whereas, on the *fourteenth* day of *June*, eighteen hundred and *ninety-four*, the Superior Court of the said *City and County of San Francisco*, State of *California*, duly made an order of sale, authorizing the said party of the first part to sell certain real estate of the said minors, situated in said *City and County of San Francisco*, State of *California*. and specified and particularly described in said order of sale.

And whereas, under and by virtue of said order of sale, and pursuant to legal notices given thereof, the said party of the first part, on the *fourteenth* day of *July*, eighteen hundred and *ninety-four*, at the *auction salesrooms of S. P. Middleton*, in said city and county, at *twelve o'clock M.*, offered for sale, in *one parcel*, at *public auction*, and subject to confirmation by said Superior Court, the said real estate, situated in the said city and county, and specified and described in said order of sale aforesaid, and at such sale the said party of the second part became the purchaser of the *whole* of said real estate, hereinafter particularly described, for the sum of *fourteen hundred* dollars, *gold coin* of the United States, he being the highest and best bidder, and that being the highest and best sum bid.

And whereas, the said Superior Court, upon the due and legal return of her proceedings under the said order of sale, made by the said party of the first part on the *first* day of *April*, eighteen hundred and *ninety-four*, after making the said sale, upon due and legal notice of at least ten days, given in such manner as the Judge of said Court had directed, did, on the said *first* day of *April*, eighteen hundred and *ninety-four*, make an order confirming said sale, and directing conveyances to be executed to the said party of the second part, a certified copy of which order of confirmation was recorded in the office of the said County Recorder of the said city and county, within which the said land sold is situated, on the *second* day of *April*, eighteen hundred and *ninety-four*, which said order of confirmation now on file and of record in said Recorder's office, are hereby referred to and made a part of this indenture.

Now, therefore, the said *Mary Jones*, the guardian of the *persons and estates of the above-named minors*, as aforesaid, the party of the first part, pursuant to the order last aforesaid, of the said Superior Court, for and in consideration of the said sum of *fourteen hundred* dollars, *gold coin* of the United States, to her in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, *has granted, bargained, sold, and conveyed*, and by these presents *does grant, bargain, sell, and convey* unto the said party of the second part, his heirs and assigns, forever, all the right, title, interest, and estate of the said *William Jones, Arthur Jones, Kate Jones, Charlotte Jones, Emma Jones, and Ernest Jones*, minors, in and to all that certain lot, piece, or parcel of land, situated, lying, and being in said *City and County of San*



*Francisco, State of California*, and bounded and particularly described as follows, to wit:

[Description.]

Together with all the tenements, hereditaments, and appurtenances to the same belonging or in anywise appertaining;

To have and to hold, all and singular, the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part, guardian as aforesaid, has hereunto set her hand and seal, the day and year first above written.

MARY JONES. [L. s.]

Guardian of the persons and estates of *William Jones, Arthur Jones, Kate Jones, Charlotte Jones, Emma Jones, and Ernest Jones, minors.*

STATE OF *California*,  
City and County of *San Francisco*. } ss.

Be it known that on this *eighth* day of *April*, eighteen hundred and *ninety-four*, personally appeared before me, a Notary Public, within and for the city and county aforesaid, *Mary Jones*, personally known to me to be the same person whose name is subscribed to the foregoing deed, as the guardian of the persons and estates of *William Jones, Arthur Jones, Kate Jones, Charlotte Jones, Emma Jones, and Ernest Jones*, minors, and she acknowledged to me that she, as such guardian of said minors above named, executed the same for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my seal of office, the day and year last above written.

ALFRED C. CRANE,  
Notary Public.

[SEAL.]

### No. 155.—Deed from Husband to Wife.

THIS INDENTURE, made this, *etc.*, between *A. B.*, of *etc.*, of the first part, and *C. B.*, the wife of said *A. B.*, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the love and affection which he bears towards his wife, the said *C. B.*, and for the purpose of making her a gift [*or, for the purpose of compensating certain advances and benefits of money and property which she brought to said party of the first part by or since their marriage, or for other purposes, as may be*], does hereby give, grant, alien, and convey, unto his wife, said party of the second part, all that certain property:

[Description.]

To have and to hold the same unto the said party of the second part, her heirs and assigns, for her own sole and separate use, benefit, and behoof forever.

To hold and enjoy, all and singular the same, and every part and parcel thereof, as and for her separate estate, especially relinquishing for himself and his heirs all right or claim to the same, or any part thereof, as community property, so that the same may be held by her as separate, and not in any respect as community property.

In witness whereof, *etc.*

### No. 156.—Deed of Mining Claim.

THIS INDENTURE, made the *eighteenth* day of *April*, in the year of our Lord one thousand eight hundred and *ninety-four*, between *Frederick Goodell*, of the *City and County of San Francisco*, State of *California*, the party of the first part, and *Wm. Carlton*, of the *Island of Santa Catalina*, County of *Los Angeles*, State of *California*, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of *five thousand* dollars, *gold coin* of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, remise, release, and forever quitclaim unto the said party of the second part, and to his heirs and assigns, *two hundred (200) feet, undivided, in that certain mining claim, vein, lead, or lode, containing gold or silver and other precious metals, situate, lying, and being in the Santa Catalina Island Mining District, in the Island of Santa Catalina, County of Los Angeles, State of California, and known as the "Perseverance" vein, lead, or lode.*

Together with all the dips, spurs, and angles, and also all the metals, ores, gold, and silver bearing quartz, rock and earth therein; and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues, and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, *etc.*

(Signed, sealed, and delivered.)

### No. 157.—Deed to Incorporate a Mining Company.

THIS INDENTURE, made the *sixth* day of *August*, in the year of our Lord one thousand eight hundred and *ninety-four*, between the undersigned, the parties of the first part, and the "*Winter Gold and Silver Mining Company*," the party of the second part, witnesseth:

That whereas, the said "*Winter Gold and Silver Mining Com-*

pany" has been duly incorporated under the laws of the State of California, and it is intended by this instrument to transfer to the said party of the second part all the right, title, and interest of the said parties of the first part which they and each of them have and claim in and to the mining ground and claim or lode and its appurtenances, hereinafter described.

Now, therefore, know all men by these presents, that the said parties of the first part and each of them whose names are hereunto subscribed, in consideration of certificates of stock in said incorporated company hereafter to be issued to them, their and each of their heirs and assigns, in conformity with the by-laws of said corporation heretofore adopted, do by these presents grant, bargain, sell, transfer, remise, release, and quitclaim unto the said party of the second part, its successors and assigns, all their and each of their right, interest, claim, and demand whatsoever, in law or equity, of, in, or to all that certain mining ground, claim, or lode, situate, lying, and being in *Cove Mining District, Kern River, County of Tulare, and State of California, and known as the "Winter" lead or lode.*

Together with all the dips, angles, spurs, and variations of said mining ground, claim, or lode, and all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold the said premises, with their appurtenances, unto the said party of the second part, its successors and assigns forever.

In witness whereof, etc.

(Signed by all incorporators.)

#### **No. 158.—Deed to Incorporate a Mining Company— Another Form.**

THIS INDENTURE, made the *first day of August*, in the year of our Lord eighteen hundred and *ninety-four*, between *David Smith* [naming others] parties of the first part, and the *Happy-Go-Lucky Gold and Silver Mining Company*, whose principal place of business is at the City and County of *San Francisco*, State of *California*, party of the second part, witnesseth:

That whereas, the said *Happy-Go-Lucky Gold and Silver Mining Company* has been duly incorporated under the laws of the State of *California*, to which it is intended by this instrument to transfer all the right, title, and interest of the parties of the first part, which they and each of them have and claim in and to the mining ground and claim or lode and its appurtenances hereinafter described.

And whereas, on the *tenth day of June, 1894*, ten Mining Claims of *two hundred feet* each, making in the aggregate *two thousand feet*, were duly taken up, located, and recorded in the *Beulah District*, situated in the County of *Mono*, State of *California*, according to the usages of said Mining District; and whereas,



we, the undersigned, are the owners of the number of feet set opposite to each of our names respectively, as follows, viz.:

NAMES.	NUMBER OF FEET.
<i>Smith [and others].</i>	<i>Two hundred.</i>

Said claim or claims being called and known by the name of *Gannon, Stone & Company's Claims.*

[Here insert particular description.]

Now, therefore, know all men by these presents: That the parties of the first part, and each of them, whose names are hereunto subscribed, in consideration of certificates of stock in said incorporated company, hereafter to be issued to them, they and each of them, and assigns, in accordance with the certificate of incorporation, and in conformity with the by-laws of said corporation, do by these presents grant, bargain, sell, transfer, remise, release, and quitclaim unto the said *Happy-Go-Lucky Gold and Silver Mining Company*, all their and each of their right, title, interest, claim, and demand whatsoever, in law or in equity, of, in, and to all said mining ground, claim or claims, or quartz lode, situate, lying, and being in said Mining District, and described as aforesaid; together with all the dips, angles, spurs, and variations of said mining ground and quartz lode, and all and singular the hereditaments and appurtenances; and all and singular the mining tools, arastras, forges, furnaces, and smelting apparatus thereunto belonging.

To have and to hold the said premises with their appurtenances, unto the said *Happy-Go-Lucky Gold and Silver Mining Company*, its successors, and assigns forever.

In witness whereof, *etc.*

(Signed, sealed, and delivered.)

### No. 159.—Deed by a Corporation.

THIS INDENTURE, made this *third* day of *September*, one thousand eight hundred and *ninety-four*, by and between *The Yankee Boy Mining Company*, a corporation duly organized under the law of the *State of California*, whose principal place of business is in the *City and County of San Francisco*, *State of California*, party of the first part, and *J. N. Webster, and J. M. Patterson*, of *said city and county*, parties of the second part, witnesseth:

That whereas, the said party of the first part is a corporation duly incorporated and existing under and by virtue of the laws of the *State of California*, and in pursuance of the statutes in such cases made and provided, has acquired and is the owner of a certain mine known as *The Yankee Boy Mine*, situate in *Big Cottonwood Mining District, Salt Lake County, Utah Territory*; and whereas, the Board of Trustees of said corporation, duly assembled, duly passed the following resolution:

"It is resolved by the Trustees of the Yankee Boy Mining Company, that it is for the best interest of said company to sell and convey said mine, for the sum of thirty thousand dollars, gold coin of the United States, and apply the proceeds of such sale for the payment of the debts of said company, and H. N. Bissett, President, and John Smith, Secretary, of said Yankee Boy Mining Company, are hereby directed and authorized to make, execute, and deliver, for and in behalf of said Yankee Boy Mining Company, and as its act and deed, to said Webster and Patterson, a conveyance of said mine and mining location [give general description], and to affix to said conveyance the corporate name and seal of said corporation."

Now, therefore, in pursuance of said resolution aforesaid, and in consideration of the sum of thirty thousand (30,000) dollars, United States gold coin, paid by said parties of the second part, the receipt whereof is hereby acknowledged, the said party of the first part doth by these presents grant, bargain, sell, convey, and confirm unto the said parties of the second part, their heirs and assigns forever:

[Full Description.]

Together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein; and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof;

To have and to hold, all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, heirs and assigns forever.

In witness whereof, the said party of the first part, by resolution of its Board of Directors, hath caused these presents to be subscribed by its President and Secretary, and its corporate name and seal to be hereunto affixed, the day and year first above written.

(Signed.)

NOTE.—Corporations organized for the purpose of mining cannot sell, lease, mortgage, or otherwise dispose of the whole or any part of the corporation's mining ground, unless such act be ratified by the holders of at least two-thirds of the capital stock. Cal. Stats. 1880, p. 131.

### No. 160.—Deed—Quitclaim.

THIS INDENTURE, made the *tenth* day of *April*, in the year of our Lord one thousand eight hundred and *ninety-four*, between *Mills L. Callender, of the City and County of San Francisco, State of California*, the party of the first part, and *Asa White and John Barton, of the said city and county*, the parties of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of *one hundred* dollars, *lawful money* of the United States of America, to *him* in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, does by

these presents remise, release, and forever quitclaim unto the said parties of the second part, and to their heirs and assigns, all that certain lot, piece, or parcel of land, situate in the said *City and County of San Francisco, State of California*, and bounded and particularly described as follows, to wit:

[Description.]

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said parties of the second part, and to their heirs and assigns forever.

In witness whereof, *etc.*

### No. 161.—Quitclaim Deed.

THIS INDENTURE, made the *seventh* day of *April*, in the year of our Lord one thousand eight hundred and *ninety-four*, between *Paul Ross and Ann Ross, his wife*, of the County of *Monterey*, State of *California*, parties of the first part, and *Fernando Bright*, of the County of *Los Angeles*, State of *California*, the party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of *one thousand five hundred* dollars, *lawful money* of the United States of America, to *them* in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have remised, released, and forever quitclaimed, and by these presents do remise, release, and forever quitclaim, unto the said party of the second part, and to his heirs and assigns, all

[Description.]

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues, and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof, *etc.*

### No. 162.—Quitclaim Deed—Another Form.

THIS INDENTURE, made the *twelfth* day of *January*, in the year of our Lord one thousand eight hundred and *ninety-four*, between *Robert Jones*, of the County of *Napa*, State of *California*, the party of the first part, and *George Booth*, of the *City and County of Sacramento*, State of *California*, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of *two hundred and fifty-five* dollars, *lawful money* of the



United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey, remise, release, and forever quitclaim, unto the said party of the second part, and to his heirs and assigns, all the right, title, interest, estate, claim, and demand, both at law and in equity, and as well in possession as in expectancy, of the said party of the first part, of, in, and to all that certain lot and parcel of land, situate in the *City and County of San Francisco*, State of *California*, and bounded and described as follows, to wit:

[Description.]

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues, and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, *etc.*

### No. 163.—Deed of Right of Way.

STATE OF *California*,  
County of *San Mateo*. } ss.

WHEREAS, *certain of the inhabitants of Road District number three of San Mateo County*, taxable therein for road purposes, have petitioned in writing the *Board of Supervisors [or, Commissioners of Highways, as the case may be]* of said *San Mateo County*, to lay out a new road therein, as set forth in their petition, dated the *fourth day of April, 1894*, which said road is proposed to be located as follows, to wit:

[Description.]

Now, therefore, in consideration of the location and establishment of said road as above described, and of the benefits to accrue to us and each of us by such location, we, the undersigned, owners, occupants, and claimants of land required for road purposes on the line of the foregoing designated route, hereby signify our approval of the location of said road, and do hereby consent thereto; and we do hereby grant and dedicate the lands belonging to us and each of us, so far as the same may be required for such road, to said County of *San Mateo*, to that purpose and for the use of such road; and we hereby waive all claims for damage for and on account of the same.

In witness whereof, *etc.*

### No. 164.—Sheriff's Deed on Execution.

THIS INDENTURE, made this *twenty-fourth day of August, 1894*, between *Peter John White*, Sheriff of the *City and County of*

*San Francisco*, State of *California*, of the first part, and *John Doe*, of the *City and County of San Francisco*, State of *California*, the party of the second part:

Whereas, by virtue of a writ of execution issued out of, and under the seal of the Superior Court of the said city and county, tested the *fourth* day of *January*, 1894, upon a judgment recovered in said Court, on the *second* day of *January*, 1894, in favor of *George Wickoff* and against *John Cook*, to the said Sheriff directed and delivered, commanding him that of the personal property of the said judgment debtor, *John Cook*, in his county, he should cause to be made certain moneys in the said writ specified, and if sufficient personal property of the said judgment debtor, *John Cook*, could not be found, that then he should cause the amount of said judgment to be made of the lands, tenements, and real property belonging to said judgment debtor, *John Doe*, on the *second* day of *January*, 1894, or at any time afterwards; and whereas, because sufficient personal property of the said judgment debtor, *John Doe*, could not be found, whereof he, the said Sheriff, could cause to be made the moneys specified in said writ, he, the said Sheriff, did, in obedience to said command, levy on, take, and seize all the estate, right, title, and interest, which the said judgment debtor, *John Doe*, so had, of, in, and to the lands, tenements, real estate, and premises hereinafter particularly set forth and described, with the appurtenances, and did, on the *thirtieth* day of *January*, 1894, sell the said premises, at public vendue, in front of the City Hall, in the *City and County of San Francisco*, between the hours of nine in the morning and five in the afternoon of that day, namely, at twelve o'clock, after having first given notice of the time and place of such sale, by advertising the same according to law; at which sale the said premises were struck off and sold to the said party of the second part, for the sum of *ten thousand* dollars, gold coin of the United States, the said party of the second part being the highest bidder, and that being the highest sum bidden, and the whole price paid for the same; and whereas, the said Sheriff, after receiving from said purchaser the said sum of money so bidden as aforesaid, gave to the said party of the second part such certificate as is by law directed to be given, and filed and recorded in the office of the County Recorder of the *City and County of San Francisco*, a duplicate of such certificate; and whereas, six months after such sale have expired without any redemption of the said premises having been made:

[Recite assignment here, if any.]

Now, this indenture witnesseth, that *Peter John White*, Sheriff aforesaid, and party hereto, of the first part, by virtue of the said writ and in pursuance of the statute in such case made and provided, for and in consideration of the sum of money above mentioned, to him in hand paid as aforesaid by the said party of the second part, the receipt whereof is hereby acknowledged.

hath granted, bargained, sold, conveyed, and confirmed, and by these presents doth grant, bargain, sell, convey, and confirm unto the said party of the second part, and to his heirs and assigns, all the estate, right, title, and interest which the said judgment debtor, the said *John Cook*, had on the *second* day of *January*, 1894, or at any time afterwards, or now has of, in, and to all the following described premises, situate, lying, and being in the *City and County of San Francisco*, viz.:

[Description.]

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining.

To have and to hold the said premises, with the appurtenances, unto the said party of the second part, his heirs and assigns forever, as fully and absolutely as he, the Sheriff aforesaid, can, may, or ought to, by virtue of the said writ and of the statute in such case made and provided, grant, bargain, sell, release, consign, convey, and confirm the same.

In witness whereof, *etc.*

NOTE.—Or signed by Commissioner. See Note to No. 140.

STATE of California, }  
City and County of San Francisco. } ss.

On this *twenty-fourth* day of *August*, one thousand eight hundred and *ninety-four*, before me, *Palmer G. Wood*, a Notary Public in and for said city and county, personally appeared *Peter John White*, Sheriff of the *City and County of San Francisco*, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he, as such Sheriff aforesaid, executed the same.

In witness whereof, *etc.*

### No. 165.—Sheriff's Deed on Foreclosure.

THIS INDENTURE, made this *twenty-second* day of *August*, 1894, between *Peter Hopkins*, Sheriff of the *City and County of San Francisco*, of the first part, and *John Doe*, of the *City and County of San Francisco*, of the second part, witnesseth:

Whereas, in and by a certain judgment or decree rendered by the *Superior Court* of the *City and County of San Francisco*, State of *California*, on the *tenth* day of *April*, 1894, and entered on the *twelfth* day of *April*, 1894, in a certain action then pending in said Court, wherein *Joseph Jones* was plaintiff, and *Paul Sampson*, *Richard Roe*, *Ezra Styles*, and *John Smith* were defendants, and of which said judgment or decree a certified copy was delivered to said party of the first part, as such Sheriff, for execution, it was, among other things, ordered, adjudged, and decreed, that all and singular the mortgaged premises described in the complaint in said action, and specifically described in said judgment or decree,



be sold at public auction by the Sheriff of the *City and County of San Francisco*, in the manner required by law, and according to the course and practice of said Court; that such sale be made in front of the *City Hall*, in the *City and County of San Francisco*, between the hours of nine o'clock in the forenoon, and five o'clock in the afternoon, on such day as the said Sheriff shall appoint; that any of the parties to said action might become the purchaser at such sale; and that said Sheriff execute the usual certificates and deeds to the purchaser as required by law;

And whereas, the said Sheriff did, at the hour of twelve o'clock, noon, on the second day of *February, 1894*, after due public notice had been given, as required by the laws of this State, and the course and practice of said Court, duly sell at public auction, in front of the *City Hall*, in the *City and County of San Francisco*, agreeably to the said judgment or decree, and the provisions of law, the premises in the said decree or judgment mentioned; at which sale the premises in said judgment or decree, and herein-after described, were fairly struck off to the said *John Doe*, the said party hereto of the second part, for the sum of *five thousand dollars, gold coin of the United States*, he being the highest bidder, and that being the highest sum bidden for the same;

And whereas, the said party of the second part thereupon paid to the said Sheriff the said sum of money so bidden by him;

And whereas, the said Sheriff thereupon made and issued the usual certificate, in duplicate, of the said sale, in due form of law, and delivered one thereof to the said purchaser, and caused the other to be filed and recorded in the County Recorder's office of the *City and County of San Francisco*;

And whereas, more than six months have elapsed since the date of said sale, and no redemption has been made of the premises so sold, as aforesaid, by or on behalf of the said judgment debtors, the said defendants, or by or on behalf of any other person:

[Recite assignment here.]

Now, this indenture witnesseth, that the said party of the first part, the said *Peter Hopkins*, Sheriff, in order to carry into effect the sale so made by him as aforesaid, in pursuance of said judgment or decree, and in conformity to the statute in such case made and provided, and also, in consideration of the premises and of the said sum of *five thousand dollars, gold coin of the United States*, so bidden and paid to him by the said purchaser, the said *John Doe*, the receipt wherof is hereby acknowledged, hath granted, bargained, sold, and conveyed, and by these presents doth grant, bargain, sell, and convey unto the said party of the second part, and to his heirs and assigns forever:

[Description.]

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold, all and singular, the premises above mentioned and described, and hereby conveyed, or intended so to be, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, *etc.*

NOTE.—If by Commissioner, see Note to No. 140.

### No. 166.—Deed—Grant.

I, *John Smith*, of the *City and County of San Francisco, State of California*, for and in consideration of the sum of *twenty-two thousand six hundred* dollars, gold coin of the United States, do hereby grant to *Robert Jones, of the same place*, all that real property situated in *Redwood City, County of San Mateo, State of California*, bounded and described as follows:

[Description.]

To have and to hold the above granted and described premises unto said grantee, his heirs and assigns forever.

Witness my hand, *etc.*

### No. 167.—Tax Deed.

No. 337.—Block 364.—Page 67.—Sub. 464.

Vol. 5.—Page 74.\*

CONVEYANCE OF REAL ESTATE, for Delinquent Taxes of 1894–95.

THIS INDENTURE, made and entered into this *twentieth* day of *September*, in the year of our Lord one thousand eight hundred and *ninety-four*, between *Geo. W. Green*, Tax Collector of the County of *San Mateo, State of California*, party hereto of the first part, and *William Jones, of the same place*, party hereto of the second part, witnesseth:

That whereas, I, *Geo. W. Green*, heretofore, and at the time of the levy and publication hereinafter mentioned, was Tax Collector of the County of *San Mateo*, and by virtue of, and in conformity with, Chapter VII., Title IX. of Part III. of the "Political Code of the State of California," approved March 12, 1872, and put into effect by an Act of the Legislature of the State of California, entitled "An Act to put into immediate effect certain parts of the Political and Penal Codes," approved March 16, 1872, and all Acts amendatory thereof or supplementary thereto, did on the *third Monday in January, 1894*, deliver to the Auditor of said county a complete "Delinquent List" of all persons and property then owing taxes in said county to the State of *California* and to the County of *San Mateo*, together with the costs and charges due thereon; which said "Delinquent List" did include the property first hereinafter described in this certificate. That the said property was assessed for the fiscal year ending June 30, 1894, for State and county taxes, at \$10,050.00, to *Mary Muggins* [or if the owner is not known, to all unknown owners or claimants];

\* NOTE.—Such reference to books, etc., is for convenience in tracing title, there being separate books, etc., for each year.



that the property assessed, levied upon, and advertised, situate, lying, and being within the County of *San Mateo*, and described thus: *Lot commencing on the northwest line of Mission street, 150 feet northeast from New Anthony street; thence running northeast 48 feet; thence northwest 100 feet; thence southwest 48 feet, and thence southeast 100 feet, to the point of beginning; was by me, the Tax Collector as aforesaid, on the fourth day of March, 1894, in accordance with law, offered for sale, to pay said taxes, with the costs and charges due thereon, at public auction, in front of the County Court House, in said county; that at said auction James Y. Broad was the bidder who was willing to take the least quantity of, or smallest portion of the interest in, said land, and pay the taxes, costs, and charges due thereon; which taxes, costs, and charges, including two dollars for Certificate of Sale, amounted to one hundred and seventy-one dollars and thirty-four cents (\$171.34); that the said least quantity of, or smallest portion of the interest in, said land, lying and being within the County of San Mateo, as is hereinafter described, to wit: The lot of land commencing on the northwest line of Mission street at a point distant one hundred and fifty (150) feet northeasterly from New Anthony street; thence running northeasterly on the northwesterly line of Mission street forty-eight (48) feet; thence at right angles northwesterly one hundred (100) feet; thence at right angles southwesterly forty-eight (48) feet, and thence at right angles southeasterly one hundred (100) feet to the point of beginning, was, by me, Geo. W. Green, Tax Collector as aforesaid, struck off to the said James Y. Broad, who paid the full amount of said taxes, costs and charges, and therefore became the purchaser of the last described piece or parcel of land so sold for said taxes as aforesaid; that the said real estate was sold subject to redemption, pursuant to the statute in such cases made and provided; and whereas, no person has redeemed the property aforesaid during the time allowed by law for its redemption, and stated in the certificate of sale therefor.*

*And whereas, the said James Y. Broad has duly assigned his Certificate of Sale, and all his rights thereunder, unto the said party of the second part, as appears from said Certificate of Sale and assignment thereof, now on file in the Tax Collector's Office in said county.*

Now, therefore, this indenture witnesseth, that, for and in consideration of the sum of *one hundred and seventy-one dollars and thirty-four cents (\$171.34)*, to me in hand paid, the receipt whereof is hereby acknowledged, I, *Geo. W. Green*, Tax Collector, as aforesaid, by virtue and in pursuance of the statutes in such cases made and provided, have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm unto the aforesaid *William Jones*, and to his heirs and assigns forever, all that lot, piece, or parcel of land so sold, and hereinbefore and last described in this deed, as fully and absolutely as I, *Geo. W. Green*, Tax Collector, as aforesaid, may



or can lawfully sell and convey the same; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, of the said *Mary Muggins*, and of all owners and claimants thereof, known and unknown, in or to the said last above-described premises, and every part and parcel thereof, with the appurtenances, which she or they, or either of them, had or possessed on the day of said levy or assessment.

To have and to hold, all and singular, the hereinbefore and last-mentioned and described premises, together with the appurtenances thereof, unto *William Jones*, the said party of the second part, and his heirs and assigns forever.

In witness whereof, *etc.*

NOTE.—In California, under the Act of 1895, all delinquent property is bid in by the State.

#### **No. 168.—Sheriff's Deed on Execution from Justice's Court.**

THIS INDENTURE, made this *twelfth* day of *April*, 1894, between *Peter J. White*, Sheriff of the City and County of *San Francisco*, of the first part, and *Joseph P. Jones*, of the City and County of *San Francisco*, and State of *California*, of the second part:

Whereas, by virtue of a writ of execution issued out of the Justice's Court of the City and County of *San Francisco*, State of *California*, on the *seventeenth* day of *June*, 1894, upon a judgment recovered in said court on the *fifteenth* day of *June*, 1894, in favor of *John Doe*, as plaintiff, and against *Robert Roe*, as defendant, to the said Sheriff directed and delivered, commanding him that of the personal property of the said judgment debtor, *Robert Roe*, in his county, he should cause to be made certain moneys in the said writ specified, and if sufficient personal property of the said judgment debtor, *Robert Roe*, could not be found, that then he should cause the amount of said judgment to be made of the lands, tenements, and real property belonging to said judgment debtor, *Robert Roe*, on the said *seventeenth* day of *June*, 1894, or at any time afterwards. And whereas, because sufficient personal property of the said judgment debtor could not be found, whereof he, the said Sheriff, could cause to be made the moneys specified in said writ, he the said Sheriff, did in obedience to the said command, levy on, take, and seize, all the estate, right, title, and interest, which the said judgment debtor so had, of, in, and to the lands, tenements, real estate, and premises hereinafter particularly set forth and described, with the appurtenances, and did on the *tenth* day of *July*, 1894, sell the said premises, at public vendue, in front of the City Hall, in the City and County of *San Francisco*, between the hours of *nine* in the morning and *five* in the afternoon of that day, namely, at *twelve* o'clock, after having first given notice of the time and place of such sale, by advertising the same according to law; at which sale the said premises were struck off and sold to *John Center*, for the sum

of *three hundred and twenty-five* dollars, the said *John Center* being the highest bidder, and that being the highest sum bidden, and the whole price paid for the same. And whereas, the said Sheriff, after receiving from said purchaser the said sum of money so bidden as aforesaid, gave to him such certificate as is by law directed to be given, and filed and recorded in the office of the County Recorder of the *City and County of San Francisco*, a duplicate of such certificate; and whereas, six months after such sale have expired without any redemption of the said premises having been made; and whereas, said *John Center* did on the *tenth* day of *September, 1894*, duly assign, transfer, and set over in due form, to said party of the second part, said certificate of sale, and all his right, title, and interest therein, and thereby authorized him to receive this deed from said Sheriff.

Now this indenture witnesseth, that said *Peter J. White*, Sheriff aforesaid, and party hereto of the first part, by virtue of the said writ and in pursuance of the statute in such case made and provided, for and in consideration of the sum of money above mentioned to him in hand paid as aforesaid by the said *John Center*, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, conveyed, and confirmed, and by these presents doth grant, bargain, sell, convey and confirm unto the said *Joseph P. Jones*, assignee as aforesaid of said *John Center*, his heirs and assigns, all the estate, right, title, and interest which the said judgment debtor, the said *Robert Roe*, had on the said *seventeenth* day of *June, 1894*, or at any time afterwards, or now has, of, in, and to all the following described premises, situate, lying, and being in the *City and County of San Francisco*, viz:

[Description.]

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining.

To have and to hold the said above mentioned and described premises, with the appurtenances, unto the said *Joseph P. Jones*, his heirs and assigns for ever, as fully and absolutely as he, the said Sheriff aforesaid, can, may, or ought to, by virtue of the said writ, and of the statute in such case made and provided, grant, bargain, sell, release, consign, convey, and confirm the same.

In witness whereof, the said Sheriff, *etc.*

#### No. 169.—Deed—Warranty against Grantor.

THIS INDENTURE, made the *seventh* day of *January*, in the year of our Lord one thousand eight hundred and *ninety-four*, between *Charlotte Russell*, of the County of *Mendocino*, State of *California*, the party of the first part, and *Abner H. Butt*, of the *City and County of Sacramento*, State of *California*, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration



of the sum of *eight hundred and ninety-six* dollars, *gold coin* of the United States of America, to her in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents, grant, bargain, sell, aliene, convey, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all

[Description.]

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues, and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever; and the said party of the first part, for herself and her heirs, executors, and administrators, does hereby covenant and agree to and with the said party of the second part, his heirs and assigns, that she has not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby, or by means whereof, the said premises, or any part or parcel thereof, now are, or at any time hereafter shall, or may be impeached, charged, or incumbered, in any manner or way whatsoever.

In witness wereof, *etc.*

#### No. 170.—Deed—Warranty against Grantor.

THIS INDENTURE, made the *eighth* day of *April*, in the year of our Lord, one thousand eight hundred and *ninety-four*, between *Robert Smith*, of the *City and County of San Francisco, State of California*, the party of the first part, and *Thomas Rollins*, of the same place, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of *two thousand two hundred and fifty* dollars, *gold coin* of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does, by these presents, grant, bargain, sell, convey, and confirm unto the party of the second part, and to his heirs and assigns forever, all that certain lot, piece, or parcel of land situate in the *City and County of San Francisco, State of California*, bounded and described as follows, to wit:

[Description.]

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues, and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever. And the said party of the first part, for himself and his heirs, executors, and administrators, does hereby covenant and agree to and with the said party of the second part, his heirs, executors, administra-



tors, and assigns, that he has not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby or by means whereof the said premises, or any part or parcel thereof, now are, or at any time hereafter shall, or may, be impeached, charged, or incumbered in any manner or way whatsoever.

In witness whereof, *etc.*

#### No. 171.—Warranty Deed.

THIS INDENTURE, made the *fourteenth* day of *April*, in the year of our Lord one thousand eight hundred and *ninety-four*, between *Jackson Wilson*, of *Monterey*, County of *Monterey*, State of *California*, the party of the first part, and *George Washington*, of the same place, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of *two thousand six hundred* dollars, *gold coin* of the United States of America, to him in hand paid, by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever:

[Description.]

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues, and profits thereof.

To have and to hold, all and singular, the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever. And the said party of the first part, and his heirs, the said premises, in the quiet and peaceable possession of the said party of the second part, his heirs, and assigns, against the said party of the first part, and his heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In witness whereof, *etc.*

#### No. 172.—Warranty Deed by Attorney—Full Covenants.

THIS INDENTURE, made the *seventh* day of *January*, one thousand eight hundred and *ninety-four*, between *Walter B. Lyon*, of *Iowa Hill*, County of *Placer*, State of *California*, and *William Sexton*, of *Auburn*, county aforesaid, by their attorney-in-fact, *D. D. Steward*, the parties of the first part, and *Eugene A. Phelps*, of *Forest Hill*, county aforesaid, and *Thomas Jamison*, of *Poverty Bar*, county aforesaid, the parties of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of *five thousand six hundred and eight* dollars, *gold*

coin of the United States of America, to them in hand paid by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents do grant, bargain, sell, aliene, convey, and confirm unto the said parties of the second part, and to their heirs and assigns forever.

[Description.]

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold, all and singular, the above granted and described premises, with the appurtenances, unto the said parties of the second part, their heirs and assigns forever.

And the said parties of the first part, for their heirs, executors, and administrators, do covenant, grant, and agree to and with the said parties of the second part, their heirs and assigns, that the said parties of the first part, at the time of the sealing and delivery of these presents, are lawfully seized in fee-simple absolute of and in all and singular the above granted and described premises, with the appurtenances, and have good right, full power, and lawful authority, to grant, bargain, sell, and convey the same, in manner aforesaid; and that the said parties of the second part, their heirs and assigns, shall and may, at all times hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said parties of the first part, their heirs and assigns, or of any other person or persons lawfully claiming or to claim the same; and that the same now are free, clear, discharged, and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and incumbrances, of what nature or kind soever.

And, also, that the said parties of the first part, and their heirs, and all and every person or persons whomsoever, lawfully or equitably deriving any estate, right, title, or interest, of, in, or to the hereinbefore granted premises, by, from, under, or in trust for them, shall and will, at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said parties of the second part, their heirs and assigns, make, do, and execute, or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances, in the law, for the better and more effectually vesting and confirming the premises, hereby granted, or so intended to be, in and to the said parties of the second part, their heirs and assigns forever, as by the said parties of the second part, their heirs, or assigns,



or their counsel learned in the law, shall be reasonably advised or required; and the said parties of the first part, their heirs, the above described premises, and every part and parcel thereof, with the appurtenances, unto the said parties of the second part, their heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In witness whereof, *etc.*

### No. 173.—Deed—Bargain and Sale, or Quitclaim.

THIS INDENTURE, made the *twenty-third* day of *February*, in the year of our Lord one thousand eight hundred and *ninety-four*, between *Wm. Sharon*, of the State of *Nevada*, the party of the first part, and *Wm. C. Ransom*, of the *City and County of San Francisco*, State of *California*, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of *one hundred thousand (100,000)* dollars, *gold coin* of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey unto the said party of the second part, and to his heirs and assigns forever; all that certain lot, piece, or parcel of land situate, lying, and being in the *City and County of San Francisco*, State of *California*, and bounded and particularly described as follows, to wit:

[Description.]

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold, all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, *etc.*

### No. 174.—Deed—Civil Code—Warranty.

I, *John Brown*, of the first part, grant to *Charles Smith*, of the second part, all that real property situated in *Sierra County*, State of *California*, bounded and described as follows:

[Description.]

The party of the first part covenants with the party of the second part, that the former is now seized in fee-simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all incumbrances; that the party of the first part, and all persons acquiring



any interest in the same through or for him, will, on demand, execute and deliver to the party of the second part, and at the expense of the latter, any further assurance of the same that may be reasonably required, and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same.

To have and to hold the above granted and described premises unto said *Charles Smith*, his heirs and assigns forever.

Witness my hand, this *third* day of *May*, 1894.

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## DEMAND.

### No. 175.—Demand for Surrender of Premises.

To *J. J., Esq.:*

*My Dear Sir:* I hereby demand that you forthwith surrender to me the *southwest quarter of the southwest quarter of section No. 26, township No. 12 south, of range 22 east, Mount Diablo base and meridian, County of Tulare, State of California.*

(Dated.)

Respectfully yours.

*J. B. S.*

NOTE.—A copy of the notice should be served, and the original preserved as evidence, because it has been the experience of the writer of this note that defendants in forcible entry cases seldom admit a fact if there is the slightest pretext for the introduction of conflicting evidence. It would be advisable, and in some instances less dangerous to the notice-server's person, to have a witness, who should, if convenient, be a friend, present when demand is made. It is not necessary, however, to reduce the demand to writing. It may, in cases of danger, be shouted at the intruder through a hole in a fence, or crack in a wall, or from the roof of a house, or top branches of a tree. The principal object is to make a demand, and the law does not require special formality in doing so. Even the words "My Dear Sir" and "Respectfully yours" may be omitted. They may, however, in extreme cases, serve a good purpose as conciliatory expressions. If practicable, the intruder might be requested to admit service of demand. If so, write on the back of the written demand: "Service of the within admitted this eleventh day of August, 1888,"—to which the intruder signs his name.

Cal. Code Civ. Proc., sec. 1160.

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## LANDS.

### No. 176.—Abandonment of Pre-emption Claim.

TO THE REGISTER AND RECEIVER OF UNITED STATES LAND OFFICE,  
*San Francisco,—*

GENTLEMEN: I hereby give you notice that, whereas, I did, on the *twenty-fifth* day of *October*, 1894, file in your office my Declaratory Statement, No. 678, claiming right of pre-emption to

*S. E. quarter of Section Twelve.*

{ Township No. 6 North,  
Range No. 7 West, Mount Diablo  
Meridian, County of Sonoma.

I do hereby abandon and relinquish all claim to the *same* and the *whole* thereof; and I request that my said Pre-emption Claim

No. 678 may be canceled on the records and files of your office. I make this abandonment for the following reason, to wit: [*State briefly the reasons*].

In witness whereof, I have hereunto set my hand and seal, at *San Francisco*, this *twenty-sixth* day of *January*, 1894.

STATE OF California, }  
County of Sonoma. } ss.

On this *twenty-sixth* day of *January*, 1894, before me, in and for said county, personally appeared *Robert Johnson*, personally known to me, and known to me to be the individual described in and who executed the foregoing Declaration of Abandonment of Pre-emption Claim No. 678, and the said *Robert Johnson* acknowledged to me that he executed the said Declaratory Abandonment freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office, the day and year aforesaid.

### No. 177.—Affidavit of Applicant.

UNITED STATES LAND OFFICE,  
*San Francisco, January 4, 1894.*

I, *Michael Casey*, of *San Mateo* County, having filed my application, No. 3674, for an entry under the provisions of the Act of Congress, approved May 20, 1862, entitled "An Act to secure homesteads on the public domain," do solemnly swear that I am the head of a family, a single man over the age of twenty-one years, and a citizen of the United States; that I have never borne arms against the Government of the United States, or given aid or comfort to its enemies; that said application No. 3674 is made for my own exclusive use and benefit, and that said entry is made for the purposes of actual settlement and cultivation, and neither directly nor indirectly for the use or benefit of any other person or persons whomsoever. Nor have I heretofore perfected or abandoned an entry made under this Act. [Repealed, but inserted herein for reference.]

Subscribed and sworn to. *etc.*

### No. 178.—Declaratory Statement.

UNITED STATES OF AMERICA.

DECLARATORY STATEMENT OF *Patrick Noonan*, on land not subject to private entry.

I, *Patrick Noonan*, of *Sonoma* County, State of *California*, a naturalized citizen of the United States, an unmarried man, over the age of twenty-one years, have, on the *twenty-fifth* day of *November*, 1894, settled and improved the following described Government lands, situate, lying, and being in the county and State aforesaid, and more particularly described as follows, to wit:

The southeast quarter ( $\frac{1}{4}$ ) of Section No. 12, Township No. 6 north, Range No. 7 west, *Mount Diablo meridian*, in the district of land subject to sale at the U. S. Land Office at *San Francisco*, and containing *one hundred and sixty (160) acres*; which land has not been offered at public sale, and thus rendered subject to private entry. And I do hereby give notice that I intend to claim said tract of land as a pre-emption right, under the provisions of the Act of Congress of 3d March, 1853, entitled "An Act to provide for the survey of public lands in *California*, the granting of pre-emption rights therein, and for other purposes."

(Signed.)

INDORSEMENT.

UNITED STATES LAND OFFICE,  
*San Francisco, November 30, 1894.*

I hereby certify that the within and foregoing is a true, full, and correct copy of the declaratory statement of *Patrick Noonan*, as the original remains on file in this office.

**No. 179.—Homestead Application.**

LAND OFFICE AT *San Francisco*,  
*February 4, 1894.*

I, *James Casey*, of *San Mateo County*, do hereby apply to enter, under the provisions of the Act of Congress approved May 20, 1862, entitled "An Act to secure Homesteads to actual settlers on the public domain," the *northeast quarter* ( $\frac{1}{4}$ ) of Section 9, in Township 6 south, Range 7 east, containing 160 acres, *San Mateo County, Mount Diablo Meridian*.

UNITED STATES LAND OFFICE,  
*San Francisco, February 4, 1894.*

I, *H. G. Rollins*, Register of the Land Office, do hereby certify that the above application is for surveyed lands of the class which the applicant is legally entitled to enter under the Homestead Act of May 20, 1862, and that there is no prior valid adverse right to the same.

**No. 180.—Declaration of Homestead—Married Woman.**

KNOW ALL MEN BY THESE PRESENTS: That I do hereby certify and declare that I am the wife of *John T. Fox*, and that I do now, at the time of making this declaration, actually reside with my family on the land and premises hereinafter described. That the land and premises on which I reside are bounded and described as follows, to wit: Lying and being in the *City and County of San Francisco, State of California*, and commencing

[Description.]

That it is my intention to use and claim the said lot of land and premises above described, together with the dwelling-house



thereon, and its appurtenances, as a Homestead, and I do hereby select and claim the same as a Homestead.

That I make this declaration for the joint benefit of myself and husband; and I declare that my husband has not made a Declaration of Homestead.

That the actual cash value of said property I estimate to be *five thousand* dollars.

In witness whereof, I have hereunto set my hand and seal this *third day of May*, one thousand eight hundred and *ninety-four*.

(Signed.)

NOTE 1.—In California the declaration must be signed by the party making it, and be acknowledged and recorded. The amount of exemption is the value of \$5000. It may be carved out of a property of greater value. The family must live on the land. It is exempt from forced sale, except for taxes, mechanics' and vendors' liens, and a mortgage signed and acknowledged by both husband and wife and recorded. At death of either party, if carved out of the common property, it vests absolutely in the survivor. It may be sold or mortgaged, if both parties execute the instrument, the same as a deed is executed. The declaration may be filed in the Recorder's office, after attachment and execution levied, and at any time before a judgment, which is a lien by process of law; but it is very unsafe to delay until seizure by process of law. If the homestead is carved out of the separate property of one of the parties, in some places, it vests in the survivor for a limited period; in others, absolutely. It is not practicable to give an intelligent summary of the law in other particulars than the foregoing. Special reference is necessary in each particular. C. C., secs. 1237, 1269.

NOTE 2.—In Nevada, the same in amount, and in other respects substantially the same as in California, except if the homestead is carved out of the separate property of either spouse, the other must join in the declaration. The value need not be stated in the declaration. It appears also necessary after death to obtain an order of Court setting it over to the survivor; though it could not be attacked upon failure to do so until abandonment, either actual or constructive. Gen. Stats., secs. 539, 540, 542 *et seq.*

NOTE 3.—In Idaho the form of declaration is the same as in California. No value need be stated. Residence on the land is necessary. It may be by the wife carved out of the husband's estate; but the husband cannot, without the wife's consent, carve it out of hers. In other respects, the same as in California. Rev. Stats., secs. 3035-3088.

NOTE 4.—In Montana 160 acres of agricultural land and the dwelling-house on it may be selected, not being a town lot; or one-fourth of an acre in a town and the dwelling-house on it, provided it does not exceed in value \$25.00. In other respects, the law is the same substantially as in California. C. C., sec. 1693.

NOTE 5.—In Utah land and improvements to the value of \$1000 to the head of a family, and \$500 for his wife, and \$250 for each other member of his family. A preliminary declaration is not necessary; but the exemption is claimed when execution is levied. The usual exceptions are made that exemption is not allowed as against executions in actions when judgment is recovered for the price of the land or appurtenances. Comp. Laws, pars. 308, 309, sec. 3429.

NOTE 6.—In North Dakota the same as in California, substantially. Stats. 1891, p. 185.

NOTE 7.—In South Dakota the Acts of 1891, pp. 190-1, provide for the conveyance of the homestead. In other respects, the same as in North Dakota.

NOTE 8.—In Wyoming no declaration is necessary. The exemption must be claimed when process is levied. The head of a family is entitled to claim \$1500 value of land as exempt from sale. The exemption is from all debts and civil obligations. It must not exceed 160 acres. It may consist of a house and town lot of the same value. When the homestead is established (it would seem by use) it cannot be incumbered or disposed of without the deed of both the husband and wife. If worth more than \$1500, it may be sold by the creditor, and the excess paid to him. When so sold the proceeds to the extent of \$1500 are also exempt. This is also the law in California and in other States. Rev. Stats., secs. 2780-2786.

NOTE 9.—In Washington the same as in Wyoming. The value is \$1000 while the land is occupied by claimant or his family. The claim of exemption may be made at any time before sale. The wife must sign any deed or mortgage. Hill's Stats. and Codes, secs. 479-490.

NOTE 10.—In Oregon the homestead, when the actual abode of the family, is exempt to the value of \$1500. It shall not exceed 160 acres, if not in a town or city laid off in blocks or lots. If so, then one block is exempt. In no case shall a homestead be less than twenty acres or one block in a city or town, regardless of value. In any case the execution creditor may pay the claimant \$1500, and then sell under his execution, and the \$1500 is exempt from execution. The homestead descends to the survivor. Laws of Oregon, 1893, pp. 93-4.

NOTE 11.—In Colorado the amount of the value is \$2000 to the head of a family. The word "Homestead" shall be entered on the margin of the claimant's record of title

to the same in the Recorder's office, with the date of claim, etc. It is only exempt while occupied by the family. It may consist of a house and lot or lots in any town or city, or a farm of any number of acres, not valued at more than \$2000. The wife must join in the mortgage, and it must be acknowledged separately by the wife. The proceeds of execution sale of to extent of \$2000 go to claimant. Mills' Stats., secs. 2132-2139.

NOTE 12.—In Arizona the exemption is four thousand dollars to each head of a family. The declaration is in writing, according to the California form. The declaration may be made by a person having charge of the premises for the benefit of a husband or wife or the head of a family. It must be abandoned the same as in California. When the declaration is filed the husband and wife become joint tenants,—that is to say, it goes to the survivor. Rev. Stats., secs. 2071-2085.

### No. 181.—Declaration of Homestead—Husband.

KNOW ALL MEN BY THESE PRESENTS: That I do hereby certify and declare that I am married, and that I do now, at the time of making this declaration, actually reside with my family on the land and premises hereinafter described. That my family consists of a wife and *twenty-three* children. That the land and premises on which I reside are bounded and described as follows, to wit: Lying and being in the *City and County of San Francisco*, State of *California*, and commencing:

[Description.]

That it is my intention to use and claim the said lot of land and premises above described, together with the dwelling-house thereon, and its appurtenances, as a homestead, and I do hereby select and claim the same as a homestead. That the actual cash value of said property I estimate to be *four thousand dollars*.

In witness whereof, *etc.*

### No. 182.—Declaration of Abandonment of Homestead.

KNOW ALL MEN BY THESE PRESENTS: That we, *James Barrett and Mary Barrett, his wife*, of the *City and County of San Francisco*, State of *California*, do hereby abandon, release, and discharge from any and all claim by us, or either of us, as a homestead, the lot of land and premises situate, lying, and being in the *City and County of San Francisco*, State of *California*, bounded and described as follows, to wit:

[Description.]

Together with the tenements and appurtenances thereunto belonging.

In witness whereof, *etc.*

### No. 183.—Pre-emption Affidavit.

UNITED STATES LAND OFFICE.

I, *James Brophy*, claiming the right of pre-emption, under the provisions of the Act of Congress entitled "An Act to provide for the survey of the public lands in California, the granting of pre-emption rights therein, and for other purposes," approved March 3, 1853, and Acts amendatory thereof and supplemental thereto, to the following described lands, viz:

[Description.]

subject to sale at U. S. Land Office, do solemnly swear that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit; and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whomsoever, by which the title which I may acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person or persons except myself; and that I have not, since March 3, 1853, had the benefit of the pre-emption laws of the United States in any State or Territory. So help me God.

JAMES BROPHY.

#### INDORSEMENT.

I, *Chas. H. Chamberlain*, Register of the Land Office at *San Francisco*, do hereby certify that the above affidavit was taken and subscribed before me, this *third* day of *February*, 1894.

CHAS. H. CHAMBERLAIN,

Register.

#### No. 184.—Summons.

IN THE UNITED STATES LAND OFFICE,  
FOR THE *San Francisco* Land District.

THE PEOPLE OF THE UNITED STATES TO *Robert McCreary*, of *San Mateo* County, Greeting:

You are hereby summoned to appear before us, at our office, in *San Francisco*, on *Monday*, the *eighteenth* day of *January*, 1894, at *ten o'clock A.M.*, to contest the claim of *Michael Casey*, averring your claim to the southeast quarter of Section 9, Township 1 south, of Range 6 east, to be unjust and illegal, and then and there do you show cause, if any there be, why the claim of said *Michael Casey* shall not be recognized as just and legal, and he be allowed to enter the said land.

Given under our hands, this *fifth* day of *January*, 1894.

CHAS. H. CHAMBERLAIN, Register.

H. G. ROLLINS, Receiver.

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#### LEASES.

#### No. 185.—Lease—Short Form.

THIS INDENTURE, made the *twenty-eighth* day of *May*, in the year of our Lord one thousand eight hundred and *ninety-four*, witnesseth:

That I, *Samuel Brannan*, of the *City and County of San Francisco*, State of *California*, lessor, do hereby lease, demise, and let unto *John Jones*, of said city and county, lessee:

[Description.]



To have and to hold, for the term of *two years*, to wit: from the *twenty-eighth day of May, 1892*, to the *twenty-eighth day of May, 1894*, yielding and paying therefor the rent of *twenty-four hundred dollars, gold coin* of the United States of America; and the said lessee promises to pay the said rent in such *gold coin*, and as follows, to wit: *the sum of one hundred dollars per month, monthly in advance, on the twenty-eighth day of each and every month during said term*; and to quit and deliver up the premises to the lessor or his agent or attorney, peaceably and quietly, at the end of the term, in as good order and condition (reasonable use and wear thereof, and damages by the elements excepted), as the same are now or may be put into, and to pay the rent as above stated during the term, also the rent as above stated for such further time as the lessee may hold the same, and not make or suffer any waste thereof, nor lease, nor underlet, nor permit any other person or persons to occupy or improve the same, or make, or suffer to be made, any alteration therein but with the approbation of the lessor thereto, in writing, having been first obtained, and that the lessor may enter to view and make improvements, and to expel the lessee if he shall fail to pay the rent as aforesaid, or make or suffer any strip or waste thereof.

And should default be made in the payment of any portion of said rent when due, and for *three days* thereafter, the said lessor, his agent or attorney, may re-enter and take possession, and at his option terminate this lease.

(Signed.)

#### No. 186.—Lease—Covenants not to Underlet.

THIS INDENTURE, made the *thirtieth day of May*, in the year of our Lord one thousand eight hundred and *ninety-four*, between *Frank M. Pixley*, of the *City and County of San Francisco*, State of *California*, the party of the first part, and *William Hale*, of said *city and county*, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter mentioned, reserved and contained on the part and behalf of the said party of the second part, his executors, administrators, and assigns, to be paid, kept, and performed, does by these presents grant, demise, and let unto the said party of the second part, his executors, administrators, and assigns, all

[Description.]

To have and to hold the said premises, with the appurtenances, unto the said party of the second part, his executors, administrators, and assigns; from the *first day of June*, one thousand eight hundred and *ninety-four*, for and during the full term of *eight years* thence next ensuing, and fully to be complete and ended; yielding and paying therefor unto the said party of the first part, his heirs or assigns, *monthly, and every month*, during the said term,

the *monthly* rent or sum of *one hundred dollars, in United States gold coin, in advance, on the first day of each and every month.*

Provided always, nevertheless, that if the rent above reserved, or any part thereof, shall be in arrear or unpaid on any day of payment whereon the same ought to be paid as aforesaid, or if default shall be made in any of the covenants herein contained, on the part or behalf of the said party of the second part, his executors, administrators, and assigns, to be paid, kept, or performed, then and from thenceforth it shall and may be lawful for the said party of the first part, his heirs or assigns, into and upon the said premises, and every part thereof, wholly to re-enter, and the same to have again, repossess, and enjoy as in his or their first and former estate, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. And the said party of the second part, for himself and his heirs, executors, and administrators, does hereby covenant and agree to and with the said party of the first part, his heirs and assigns, that the said party of the second part, his executors, administrators, or assigns, shall and will, *monthly, and every month*, during the said term, well and truly pay, or cause to be paid, unto the said party of the first part, his heirs or assigns, the said rent, on the days and in the manner limited and prescribed as aforesaid for the payment thereof, without any deduction, fraud, or delay, according to the true intent and meaning of these presents; *nor assign this lease, nor permit any other persons to improve the same, or make or suffer to be made any alteration therein but with the approbation of the lessor's consent in writing having been first obtained*, and that on the last day of said term or other sooner determination of the estate hereby granted, the said party of the second part, his executors, administrators, and assigns, shall and will, peaceably and quietly, leave, surrender, and yield up unto the said party of the first part, his heirs or assigns, all and singular the said premises, in good state and condition, as the same are now or may be put into (reasonable use and wear thereof, and damage by the elements excepted).

And the said party of the first part, for himself and his heirs and assigns, does hereby covenant and agree, that the said party of the second part, his executors, administrators, or assigns, paying the said rent and performing the covenants and agreements aforesaid, the said party of the second part, his executors, administrators, and assigns, shall and may at all times during the said term, peaceably and quietly have, hold, and enjoy the said premises, without any manner of let, suit, trouble, or hindrance of or from the said party of the first part, his heirs or assigns, *or any other person or persons whomsoever.*

In witness whereof, *etc.*



**No. 187.—Lease—Another Form—Holding Over.**

THIS INDENTURE, made and entered into at *Sacramento*, State of *California*, this *sixth* day of *January*, one thousand eight hundred and *ninety-four*, between *John Doe*, of the County of *Sacramento*, State of *California*, the party of the first part, and *David Jones*, of the same place, the party of the second part, witnesseth:

That the said party of the first part has letten, and by these presents doth grant, demise, and let, unto the said party of the second part, and the said party of the second part has hired and taken, and by these presents doth hire and take of and from the said party of the first part,

[Description.]

with the appurtenances, *one year* from the *fifteenth* day of *January*, one thousand eight hundred and *ninety-four*, at the *yearly* rent or sum of *one thousand two hundred (1200)* dollars, payable *monthly* in advance, in equal *monthly* payments of *one hundred (100)* dollars, in *gold coin* of the United States.

And it is agreed, that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part to re-enter the said premises, and to remove all persons therefrom.

And the said party of the second part does hereby covenant to pay to the said party of the first part the said rent, herein reserved in the manner herein specified. And not to make or suffer any alteration to be made therein, without the written consent of the said party of the first part; and not to assign this lease without the written consent of the said party of the first part. And that at the expiration of the said term, or any sooner determination of this lease, the said party of the second part will quit and surrender the premises hereby demised, in as good order and condition as reasonable use and wear thereof will permit, damages by the elements excepted. And if the party of the second part shall hold over the said term with the consent, expressed or implied, of the party of the first part, such holding shall be construed to be a tenancy only from month to month.

In witness whereof, *etc.*

**No. 188.—Crop Lease, or Farming Lease on Shares.**

THIS INDENTURE, made the *thirteenth* day of *May*, in the year of our Lord one thousand eight hundred and *ninety-four*, between *Frank M. Pixley*, of the County of *San Mateo*, State of *California*, the party of the first part, and *William Hale*, of said city and county, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter mentioned,



reserved and contained on the part and behalf of the said party of the second part, his executors, administrators, and assigns, to be paid, kept, and performed, has granted, demised, and to farm let, and by these presents does grant, demise, and to farm let, unto the said party of the second part, his executors, administrators, and assigns, all

[Description,]

To have and to hold the said demised premises, unto the party of the second part, his heirs, executors, and administrators, for his and their sole and proper use and benefit, for and during the term aforesaid, together with all the tenements and hereditaments thereunto appertaining, and all the stock and farming utensils, of every name and nature, now being in or upon the same, belonging to the said party of the first part.

In consideration whereof, the said party of the second part hereby covenants and agrees to and with the party of the first part, that he will occupy, till, and in all respects cultivate the premises above mentioned, during the term aforesaid, in a farmerlike manner, and according to the usual course of farming practiced in the neighborhood; that he will not commit any waste or damage, or suffer any to be done; that he will, at his own cost and expense, keep the fences and buildings on the said premises in good repair, reasonable wear thereof and damages by the elements excepted; and that he will deliver to the said party of the first part, his heirs, executors, or administrators, or to his or their order, one equal *third* of all the proceeds and crops produced on the said farm and premises aforesaid, of every name, kind, and description, to be divided on the said premises, in *stack* and *sack*, according to the usual course and custom of making such divisions in the neighborhood, and in a seasonable time after such crop shall have been gathered and harvested.

It is further understood and agreed between the aforesaid parties, that the party of the second part shall find all seed or seeds necessary to be sown on said premises, and said second party pay all taxes and assessments upon the same; that the party of the second part is to do, or cause to be done, all necessary work and labor in and about the cultivation of the said premises; that he is to have full permission to inclose, pasture, or till and cultivate, the said premises, so far as the same may be done without injury to the reversion, and to cut all necessary timber for firewood, farming purposes, and repairing fences; and that he is to give up and yield peaceable possession of the said premises at the expiration of said term.

Said first party shall furnish on said premises, at the proper time, sacks sufficient to hold all the grain coming to said first party.

In witness whereof, *etc.*

**No. 189.—Surrender of a Lease.**

KNOW ALL MEN BY THESE PRESENTS: That I, the within named *A. B.*, in consideration of *ten* dollars, *gold coin* of the United States of America, to me in hand paid, at or before the ensealing and delivery of these presents, do for myself, my executors and administrators, bargain, sell, surrender, and yield up, from the day of the date hereof, unto the within named *C. D.* and his heirs, executors, and administrators, as well the within indenture of lease, as the lands and premises therein mentioned, and the term of years therein yet to come, with all my right, title, and interest thereto; and I do hereby covenant, that the same are free and clear of all incumbrances of what kind soever, at any time by me, or by my privity, consent, or procurement, done, committed, or suffered.

Given, *etc.*

NOTE.—For assignment of leases, see Assignments.

LICENSES.

**No. 190.—Marriage License.**

STATE OF *California*,  
City and County of *San Francisco*. } ss.

THESE PRESENTS are to authorize and license any Justice of the Supreme Court, Judge of the Superior Court, Justice of the Peace, Priest, or Minister of the Gospel of any denomination, to solemnize, within said county, the marriage of *Mary Ann Sandlotto*, a native of *Ireland*, aged *twenty* years, resident of the *City and County of San Francisco*, State of *California*, and *John Sesh Democratto*, a native of *South Carolina*, aged *twenty-one* years, resident of the *City and County of San Francisco*, State of *California*. Said parties being of sufficient age to be capable of contracting marriage. In witness whereof, I have hereunto set my hand and affixed the seal of the Superior Court, of said city and county, this *third* day of *August*, 1894.

In witness whereof, *etc.*

MARRIAGE CERTIFICATE.

STATE OF *California*,  
City and County of *San Francisco*. } ss.

I hereby certify that I believe the facts stated in the above license to be true, and that upon due inquiry there appears to be no legal impediment to the marriage of said *Mary Ann Sandlotto* and *John Sesh Democratto*; that said parties were joined in marriage by me, on the *third* day of *August*, 1894, in the said city and county and State; that *Clitus Barbourou*, a resident of

said *City and County of San Francisco, State of California*, and *J. Campbell Shorbo*, a resident of the *City and County of San Francisco, State of California*, were present as witnesses of said ceremony. In witness whereof, I have hereunto set my hand, this *third day of August, 1894*.

WILLIAM T. WALLACE,

*Justice of the Supreme Court of the State of California.*

Witness: *I. S. Kalloch.*

NOTE 1.—The Secretary of the State Board of Health requires the person solemnizing a marriage to state in the Certificate of such marriage, the nativity of the parents of the parties married, whether either party was married before, if so, to whom, and whether the person with whom such former marriage was contracted, is living or dead.

NOTE 2.—This License and Certificate must be filed in the office of the County Recorder of the county, within thirty days after performing the ceremony.

NOTE 3.—See Affidavit, for license to marry.

## LIENS.

### No. 191.—Material Man's Lien.

STATE OF California, }  
County of San Diego. } ss.

*The Giant Powder Company, a corporation,* }  
vs. }  
*The San Diego Flume Company, a corporation.* }

NOTICE IS HEREBY GIVEN TO ALL WHOM IT MAY CONCERN:

That the said *Giant Powder Company* was during all the times hereinafter mentioned, and still is, a corporation, organized and doing business under the laws of the State of California. That one of the purposes for which said corporation was organized was the manufacture and sale of explosives, and other articles used in blasting.

That the *San Diego Flume Company* was during all the times hereinafter mentioned, and still is, a corporation, organized and doing business under the laws of the State of California. That one of the purposes for which said corporation was organized and in which it engaged was the construction of a flume or structure or ditch from a diverting dam owned by it on the *San Diego River, San Diego County, California*, to its city reservoir near the said *City of San Diego*.

That said structure consisted of culverts, surface ditches, tunnels, flumes, and approaches to tunnels, and about three thousand feet of tunnels, the said structure being about fifty miles long, in said County of San Diego.

That the *San Diego Flume Company* aforesaid, was and is the owner of said diverting dam, flume, surface ditches, tunnel approaches, tunnels, and reservoirs.



That *Joseph Johndrew* is the name of the contractor who on the *thirtieth day of March, 1887*, as such contractor, entered into a contract in writing with said *San Diego Flume Company*, under and by which the said *Johndrew*, agreed to do certain work on said flume, ditches, tunnels, and structures, and the following is a statement of the terms, time given, and conditions of said contract, to wit:

The said contract is hereto attached and referred to, and, with all the indorsements thereon and supplements thereto, made a part of this notice or claim of lien, and marked "*Exhibit A.*"

That immediately after the date of said contract, to wit: on or about *April 9, 1887*, the said *Johndrew* commenced work under said contract on said structure, and continued work as aforesaid until *August 10, 1887*, and there became due him under the terms of said contract about the sum of *\$40,000*.

That said contract has not been fully performed on the part of *Johndrew*, but, on the contrary, the said *Johndrew* did on or about the *tenth day of August, A. D. 1887*, abandon his contract, stop all work, and surrender said contract to said *San Diego Flume Company*, and said *Flume Company* accepted the surrender of said contract and took and accepted possession of said structure and accepted the said structure, flumes, ditches, and tunnels, and has ever since continued in the occupation and use of the same, and said works accepted as aforesaid. That thirty days have not elapsed since said contract was abandoned, and the said *Johndrew* has never resumed said work and does not intend to do so.

That said contract was not filed in the office of the *County Recorder* of said *San Diego County*, prior to *June 6, 1887*. That the amount of the contract price for said work under said contract was, as stated therein, to wit: "*Exhibit A.*"

That on the *ninth day of April, 1887*, the said *Giant Powder Company* entered into a written contract with said *Johndrew* as such contractor, to supply him with powder, caps, and fuse to be used and which was used by him in performing and working under his said contract with said *Flume Company*, which said contract is herein referred to for the terms, time given, and conditions thereof, and made part hereof, and marked "*Exhibit B.*"

That under its said contract the *Giant Powder Company*, between the *ninth day of April*, and the *tenth day of August, 1887*, furnished said *Johndrew* (and at the instance of said *San Diego Flume Company*) powder, caps, and fuse to the value of *\$7,221.57*, to be used and which were used by the said *Johndrew* in the construction of said flume, tunnel, ditch, and structure. That no part of said sum has been paid, and there are no offsets or credits, and the same, after deducting all just credits and offsets, is all due the said *Giant Powder Company* under its said contract.

The property to be charged with the lien is situated in *San Diego County, California*, and is the same property described herein and in said contract aforesaid, to wit: "*Exhibit A.*"

Wherefore, the said Giant Powder Company claims a lien on the said described property described in said contract to the extent of \$7,221.57, interest and costs and counsel fees, under the laws of the State of California.

THE GIANT POWDER COMPANY,

By its President,

ALBERT DIBBLEE.

(Sworn to by Secretary.)

NOTE 1.—California C. C. P., secs. 1183-1203. The forms given under the head of "Liens" can be made applicable in all places and under any facts where liens are allowed. It will be, therefore, only necessary to refer to the statutes, where the law can be found.

NOTE 2.—In Nevada, Gen. Stats., secs. 252, 540, 913-1060, 3808-3880.

NOTE 3.—In Idaho, Stats. 1893, pp. 49-62.

NOTE 4.—In Montana, C. C. P., secs. 2130-2141.

NOTE 5.—In Utah, Stats. 1894, pp. 44-51.

NOTE 6.—In North Dakota, Comp. Laws, secs. 5470-5481.

NOTE 7.—In South Dakota, Stats. 1893, pp. 195-196. Also Comp. Laws, secs. 5470-5481.

NOTE 8.—In Wyoming, Rev. Stats., secs. 1507-1515.

NOTE 9.—In Washington a statutory form is given. Stats. 1893, pp. 32-33. See No. 192.

NOTE 10.—In Oregon, Hill's Laws, secs. 3669-3682.

NOTE 11.—In Colorado, Stats. 1893, pp. 315-326.

NOTE 12.—In Arizona, Rev. Stats., secs. 2258-2286.

### No. 192.—Material Man's Lien—Washington.

[TITLE OF COURT AND CAUSE.]

NOTICE IS HEREBY GIVEN, that on *January 6, 1894*, [date of commencement of performing labor or furnishing material], I, at the request of *A. B.*, commenced to perform labor [*or to furnish materials to be used*] upon *S. D.* [here describe property subject to lien], of which property the owner, or reputed owner, is *S. T. H.* [or, if the owner, or reputed owner, is unknown, insert the word "*unknown*"], the performance of which labor (or the furnishing of which material), ceased on the *seventh* day of *May, 1894*; that said labor performed (or material furnished) was of the value of *\$1000*, for which labor (or material) the undersigned claims a lien upon the property herein described, for the sum of *\$1000*. [In case the claim has been assigned, add the words "*and L. S. is assignee of said claim,*" or claims, if several are united.]

[Signed by Claimant.]

STATE OF WASHINGTON, }  
County of *S.* } ss.

*A. B.* being sworn, says: I am the claimant (or attorney of the claimant) above named; I have heard the foregoing claim read, and know the contents thereof, and believe the same to be just.

(Sworn to.)

### No. 193.—Material Man's Lien.

NOTICE IS HEREBY GIVEN, that *John Brown*, of the *City and County of San Francisco*, dealer in lumber [*briefly state business*],

at the times hereinafter mentioned, furnished materials which were actually used in the construction (or alteration, or repair, as the case may be), of that certain building or structure, now upon that certain lot and parcel of land situate in the City and County of San Francisco, State of California, and sought to be charged with this lien, and described as follows, to wit:

[Description.]

That said John Smith is the name of the owner and reputed owner of said premises, and caused said building or structure to be erected and constructed.

That said John Jones is the name of the contractor who, on or about the tenth day of June, 1894, as such contractor, and agent of said owner, entered into a contract in writing with said John Brown, under and by which said Jones was to furnish the labor and material for the construction of said building, and the following is a statement of the terms, time given, and condition of said contract, to wit:

[Insert in brief.]

That said contract has been fully performed on the part of said John Brown, and the same was completed, and the work on said building, or structure, finished, on the tenth day of September, 1894, and thirty (30) days have not elapsed since the same was completed, and the said building, or structure, finished.

And said owner had due notice of said materials being furnished for said building.

That the amount of the contract price for said materials furnished as aforesaid, is three hundred (300) dollars in United States gold coin.

That two hundred dollars has been paid on account of said contract price, and that the sum of one hundred (100) dollars in gold coin of the United States is still due and owing thereon to said John Brown, after deducting all just credits and offsets.

Wherefore, said John Brown claims the benefit of the law relative to liens of mechanics and others upon real property, to wit: Chapter II., Title IV., Part III., of the Code of Civil Procedure.

(Verification.)

JOHN BROWN.

### No. 194.—Laborer's Lien.

[TITLE OF COURT AND CAUSE.]

NOTICE IS HEREBY GIVEN, that Richard Green, of the City and County of San Francisco, as mason [or as the case may be], at the times hereinafter mentioned, performed labor and services in the erection and construction of that certain building or structure, and now upon that certain lot and parcel of land situate in the City and County of San Francisco, State of California, and sought to be charged with this lien, and described as follows, to wit:

[Description.]



That said *John Smith* is the name of the owner and reputed owner of said premises, and caused said building or structure to be erected [or repaired, as the case may be].

That said *John Brown* is the name of the contractor, who, on or about the twenty-fifth day of *June, 1894*, as such contractor and agent of said owner, entered into a contract with said *Richard Green*, under and by which said *Green* was to perform certain labor, and the following is a statement of the terms, time given, and condition of said contract, to wit:

*To do all the plastering in said house, and erect two chimneys, therein, at the rate of \$5, United States gold coin, per day.*

That said contract has been fully performed on the part of said *Green*, and the same was completed, and the work on said building or structure finished, on the first day of *September, 1894*, and thirty days have not elapsed since the same was completed, and said building or structure finished.

*That the number of days' work performed on said building, by said Green, is thirty-five.*

That the amount of the contract price for said labor so furnished as aforesaid, is *one hundred and seventy-five* dollars in United States gold coin, being at the rate of *\$5 per day*, as aforesaid.

That *one hundred and ten (110)* dollars has been paid on account of said contract price, and that the sum of *sixty-five* dollars in gold coin of the United States is still due and owing and unpaid thereon to said *Green*, after deducting all just credits and offsets.

Wherefore, said *Green* claims the benefit of the law relative to Liens of Mechanics and others upon real property, to wit: Chapter II., Title IV., Part III., of the Code of Civil Procedure.

(Verification).

### No. 195.—Contractor's Lien.

STATE OF *California*,  
City and County of *San Francisco*. } ss.

[TITLE OF COURT AND CAUSE.]

NOTICE IS HEREBY GIVEN, that *John Jones*, of the City and County of *San Francisco*, as the original contractor, performed labor upon and furnished materials actually used in the construction and erection of that certain building, or structure, and now upon that certain lot or parcel of land situate in the City and County of *San Francisco*, State of *California*, and sought to be charged with this lien, and described as follows, to wit:

[Description.]

That said *John Smith* is the name of the owner, and is the reputed owner of said premises, and caused said building, or structure, to be erected and constructed.

That said *John Jones* is the name of the contractor, who, on or about the *tenth* day of *June*, 1894, as such contractor, and agent of said owner, entered into a contract in writing with said *John Smith*, under and by which said labor was performed and materials furnished, and the following is a statement of the terms, time given, and conditions of said contract, to wit:

[State briefly the same.]

That said contract has been fully performed on the part of said *John Jones*, and the same was completed, and the said building, or structure, finished, on the *tenth* day of *September*, 1894, and *sixty* (60) days have not elapsed since the same was completed, and said building, or structure, finished.

That the amount of the contract price for said labor performed and materials furnished as aforesaid, is (\$2500) two thousand five hundred dollars in U. S. gold coin.

That two thousand dollars U. S. gold coin has been paid on account of said contract price, and that the sum of five hundred (500) dollars, in gold coin of the United States, is still due and owing thereon to said *John Jones*, after deducting all just credits and offsets.

Wherefore, said *John Jones* claims the benefit of the law relative to Liens of Mechanics and others upon real property, to wit: Chapter II., Title IV., Part III., of the Code of Civil Procedure.

STATE OF California, }  
City and County of San Francisco. } ss.

*John Jones*, being duly sworn, deposes and says, that he is the person named as contractor in the foregoing Claim of Lien; that he has read the same and knows the contents thereof, and that the same is true, and that it contains (among other things), a correct statement of his demand, after deducing all just credits and offsets.

(Subscribed and sworn to.)

#### No. 196.—Sub-Contractor's Lien.

STATE OF California, }  
City and County of San Francisco. } ss.

[TITLE OF COURT AND CAUSE.]

NOTICE IS HEREBY GIVEN, that *Richard Brown*, of the City and County of San Francisco, as a sub-contractor, performed labor and furnished materials actually used in the construction [or alterations or repair, as the case may be] of that certain building or structure, and now upon that certain lot and parcel of land situate in the City and County of San Francisco, State of California, and sought to be charged with this lien, and described as follows, to wit:

[Description.]

That said *John Smith* is the name of the owner and reputed owner of said premises, and caused said building or structure to be constructed [or repaired as the case may be].

That said *John Jones* is the name of the contractor who, on or about the tenth day of *June, 1894*, as such contractor and agent of said owners, entered into a contract in writing with said *Richard Brown*, under and by which he was to perform certain labor and furnish materials for said building, and the following is a statement of the terms, time given, and condition of said contract, to wit:

[Insert conditions of contract in brief.]

That said contract has been fully performed on the part of said *Richard Brown*, and the same was completed, and the said building or structure finished, on the tenth day of *September, 1894*, and thirty days have not elapsed since the same was completed, and said building or structure finished.

That the amount of the contract price for said labor performed and materials furnished as aforesaid, is *five hundred and fifty* dollars in United States gold coin.

That *three hundred dollars* has been paid on account of said contract price, and that the sum of *two hundred and fifty* dollars in gold coin of the United States is still due and owing thereon to said *Richard Brown*, after deducting all just credits and offsets.

Wherefore, said *Richard Brown* claims the benefit of the law relative to liens of mechanics and others upon real property, to wit: Chapter II., Title IV., Part III., of the Code of Civil Procedure.

(Verification.)

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## MINING.

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### No. 197.—Notice of Location of a Quartz Claim—Form A.

NOTICE IS HEREBY GIVEN TO ALL WHOM IT MAY CONCERN: That *Henry Strange and Samuel D. Hill*, citizens of the United States, over the age of twenty-one years, having discovered a vein or lode of quartz, or rock in place, bearing *gold*, within the limits of the claim hereby located, have this day, under and in accordance with the Revised Statutes of the United States, Chap. VI., Tit. 32, located *three thousand* linear feet of this vein or lode, with surface ground *three hundred* feet in width, situated in *Downieville* Mining District, County of *Sierra*, State of *California*, and known as the *Slug Canyon* Quartz Mining Claim, and extending *three thousand* feet north to a tree blazed, and *three hundred* feet east to an oak stump, from this notice at the discovery or prospect shaft, the exterior boundaries of this claim being dis-



tinctly marked by reference to some natural object or permanent monuments, and more particularly described as follows, to wit:

[Description.]

And we intend to hold and work said claim as provided by the local customs and rules of miners, and the Mining Statutes of the United States.

SAMUEL BROWN,  
GEO. DAVIS,

HENRY STRANGE,  
SAMUEL D. HILL.

Dated on the ground, the *first* day of *May*, 1894.

Discovered *May 1*, 1894. *H. Strange*, Locator.

Located *May 1*, 1894. Recorded *May 1*, 1894.

Attest.

NOTE.—Describe the claim as accurately as possible (by courses and distances) with reference to some natural object or permanent monument, and mark the boundaries by suitable monuments; if a placer claim is located on surveyed land, describe the legal subdivisions.

Record of location notice, in absence of a District Recorder, should be made with the proper Recorder of Deeds for the county wherein the claim is situated. It is advisable to have these notices attested by at least two witnesses, for locators cannot be too careful about their evidence. In relocations to increase width of surface ground under the local law, or to more particularly identify or describe the claim, use the above form, but state after the description that it is a relocation; and, in addition, where the original location is recorded, in order that the title may revert back to the original discovery. In locations of abandoned mines, the fact that it is such a location should be stated, and the affidavits of two or more respectable parties that such mine was abandoned and subject to relocation should be recorded with the location notices.

No quartz claim can be legally located until a vein or lode has been first discovered. This should be done by sinking a prospect or discovery shaft. The exterior boundaries of the claim must be distinctly marked by permanent stakes, or monuments placed at the corners of the claim. The notice should be posted at the discovery shaft, and a copy of the same recorded within twenty days after the location. In all cases where practicable, the location should be made under a survey by a qualified Deputy Surveyor.

#### No. 198.—Notice of Location of a Placer Claim—Form B.

NOTICE IS HEREBY GIVEN TO ALL WHOM IT MAY CONCERN: That *John Brown and Henry Darling*, citizens of the United States, over the age of twenty-one years, have this day located under the Revised Statutes of the United States, Chap. VI., Tit. 32, the following described placer mining ground, viz.:\*

[Description.]

situated in *Placer Mining District, Butte County, State of California*. This claim shall be known as the *Placer Mining Claim*, and we intend to work the same in accordance with the local customs and rules of miners in said mining district.

GEORGE SMITH,  
WM. BROWN,

JOHN BROWN,  
HENRY DARLING.

Dated on the ground, this *sixth* day of *May*, 1894.

NOTE.—A person or association of persons claiming under regular location a lode or quartz mine, or a placer claim, upon *unsurveyed* land, and desiring to obtain title thereto from the United States, should first make application to the United States Surveyor-General for the State or Territory within which the claim is located for a survey thereof, using Form C.

\*NOTE.—If on surveyed land, describe the legal subdivision. If upon unsurveyed land, describe as accurately as possible by course and distance.

**No. 199.—Application to U. S. Surveyor-General for Survey of Mining Claim—Form C.**

To *Henry Williams*, U. S. Surveyor-General for *California*:

SIR: In compliance with the provisions of the Revised Statutes of the United States, Chap. VI., Tit. 32, and instructions issued thereunder, I herewith make application for an official survey of the mining claim known as the *Slickens Mine*, claimed by me, located in *Long Bridge Mining District*, in the County of *Sierra*, Township No. 9, Range No. 27 east, *Mount Diablo* base and meridian, in the State of *California*, mentioned and described in the annexed record of location; and I request that you will send to my address an estimate of the amount to be deposited for the work to be done in your office; and after such deposit shall have been made, you will cause the said mining claim to be surveyed by *John Jones*, U. S. Deputy Mineral Surveyor, and will make a plat thereof, indorsed with your approval, designating the number and description of the location, and the value of the labor and improvements made by the locator or his grantees on said mining claim; and that you will transmit duplicate copies of said plat to applicant, with a certified copy of the field notes of survey of said mining claim.

The expenses of office work are herewith tendered, and request that prompt action be taken therein.

May 17, 1894.

HARVEY HILL, Claimant.

P. O. Address, *Downieville, Sierra County, California*.

NOTE.—If the applicant is not in actual possession of the ground, an affidavit stating how he was dispossessed, when he was last in possession, and what adverse claims there are, should be filed. This affidavit should state all the material facts and circumstances.

The Surveyor-General will furnish the applicant with an estimate of the expenses for the office work, covering the items set forth in Form D; and the required deposit having been made, will direct a United States Deputy Mineral Surveyor to make the survey.

**No. 200.—Estimate of U. S. Surveyor-General for Office Work for Mining Claim—Form D.**

U. S. SURVEYOR-GENERAL'S OFFICE,  
SAN FRANCISCO, May 20, 1894.

To *Harvey Hill*, *Downieville, Sierra County, California*:

I have received your application, dated May 17, 1894, made under the provisions of Chap. VI., Revised Statutes of the United States, for a survey of the mining claim known as the *Slickens Mine*, claimed by you, located in *Long Bridge Mining District*, in the County of *Sierra*, Township No. 9, Range No. 27 east, *Mount Diablo* base and meridian, in the State of *California*; also for an estimate of the expenses of the office work required to be done in this office.

In reply, I herewith furnish an estimate of the amount to be paid for such office work, viz:

Stationery .....	\$ 5 00
Examination of the original field notes .....	10 00
Protraction of the original plat .....	10 00
Making duplicate and triplicate plats for claimant.....	30 00
Transcription of the original field notes for claimant.....	20 00
Preparing diagrams for the general and local land offices ...	20 00
<b>Total .....</b>	<b>\$95 00</b>

The said amount must be deposited with the U. S. Assistant Treasurer in San Francisco, and his certificate, in triplicate, taken therefor, and sent to this office; one to be transmitted to the Commissioner of the General Land Office, and one to the Treasurer of the United States, and the other to be forwarded to you.

Upon the filing of said certificate, in duplicate, in this office, I will at once authorize the survey of said mining claim by a United States Deputy Mineral Surveyor.

After the survey and office work have been completed, I will transmit to your address two certified plats of said mining claim, and a certified transcript of the field notes for your use.

Very respectfully,

HENRY WILLIAMS,  
U. S. Surveyor-General for California.

#### No. 201.—Form E.

U. S. SURVEYOR-GENERAL'S OFFICE,  
SAN FRANCISCO, May 15, 1894.

To John Jones, Esq., U. S. Deputy Mineral Surveyor, Downieville,  
Sierra County.

SIR: Having received an application from *H. Hill*, under the provisions of an Act of Congress, approved May 10, 1872, entitled "An Act to promote the development of the mining resources of the United States," for a survey of the *Slickens* Mining Claim, known as the *Slickens* Mine, claimed by him in the *Sierra* Mining District, County of *Sierra*, Township No. 9 north, Range No. 7 east, *Mount Diablo* base and meridian, in the State of *California*, I hereby deputize and appoint you to execute the said survey.

You will make said survey so as to define correctly the *locus* of the ground described in the annexed record of location, and according to the monuments therein referred to.

You will make your survey in strict conformity to the law and special instructions to deputy mineral surveyors from this office.

You will make full report on all matters connected therewith, the value of the improvements, work and labor done on said claim, in the currency of the United States, the character of the vein exposed, and its connection with some established monuments of public surveys.

You will transmit to this office, without unnecessary delay, your field notes of survey, your final oath, the preliminary and final



oaths of your assistants, your report, a diagram of said mine, and the affidavits of two disinterested witnesses, that to the best of their knowledge and belief, from their acquaintance with said mine, the value of the labor and improvements thereon is not less than five hundred dollars.

The United States will not be responsible for the payment of your services; you will therefore make satisfactory arrangements with the claimants before proceeding with your survey.

Very respectfully,

HENRY WILLIAMS,  
U. S. Surveyor-General for California.

NOTE.—It is sometimes necessary to use the following:

**No. 202.—Certificate of Identity of Claim—Form F.**

TERRITORY OF UTAH, }  
County of Salt Lake. } ss.

*John Brown* and *John Smith*, of lawful age, each for himself, and not one for the other, being first duly sworn according to law, deposes and says that he is a citizen of the United States; that he is well acquainted with the *Slum* Mining Claim, situated in *Slum Gulch* Mining District, county and Territory aforesaid, for which *Brigham Young, Jr.*, made application for patent, under the provisions of an Act of Congress, approved May 10, 1872; that he is not interested in the aforesaid mining claim, either directly or indirectly; that he was present on the first day of *April, 1894*, on the ground of said mining claim; and that the survey of said mining claim, made on that date, by *J. Jones*, surveyor, embraces the identical ground originally claimed by its locators; and, further, that the initial point of discovery of said lode, or mining claim, from which said survey has been made by the said surveyor, is the same place where the notice of said lode, or mining claim, originally was posted.

(Signed.)

Subscribed and sworn to before me, this *second* day of *May, 1894*, and I hereby certify that I consider the above deponents credible and reliable witnesses.

NOTE.—After the survey has been duly made, the field-notes of survey and plat thereof returned, and the whole approved by the Surveyor-General, the party may then make application to the Register and Receiver for the land district within which the claim is located, for a patent, using—

**No. 203.—Application for Patent—Form G.**

STATE OF *California*, }  
County of *Butte*. } ss.

APPLICATION FOR PATENT FOR THE SLIME MINING CLAIM.

TO THE REGISTER AND RECEIVER OF THE UNITED STATES LAND OFFICE, at *San Francisco*, State of *California*:

*Wm. H. Parks*, being duly sworn according to law, deposes and

says, that in virtue of a compliance with the mining rules, regulations, and customs by himself, the said *Parks*, and his co-claimants, who are applicants for patent herein, has become the owner of, and is in the actual, quiet, and undisturbed possession of *three thousand* linear feet of the vein, lode, or mineral deposit, together with surface ground *three hundred* feet in width, for the convenient working thereof, as allowed by local rules and customs of miners, said mineral claim, vein, lode, or deposit and surface ground being situated in the *Red Dog* Mining District, County of *Butte*, and State of *California*, and being more particularly set forth and described in the official field-notes of survey thereof, hereto attached, dated the *first* day of *April*, *1894*, and in the official plat of said survey, now posted conspicuously upon said mining claim or premises, a copy of which is filed herewith. Deponent further states that the facts relative to the right of possession of himself (and his said co-claimants hereinbefore named) to said mining claim, vein, lode, or deposit and surface ground, so surveyed and platted, are substantially as follows, to wit: [*Give full description of claim, from whom, and the manner in which title was derived.*] Which will more fully appear by reference to the copy of the original record of location heretofore furnished, and the abstract of title hereto attached and made a part of this affidavit; the value of the labor done, and the improvements made upon said claim, by himself and his grantors, being equal to the sum of *five hundred* dollars, and said improvements consists of [*describe in detail*]. In consideration of which facts, and in conformity with the provisions of Chapter VI., of Title 32, of the Revised Statutes of the United States, application is hereby made for and in behalf of said *W. H. Parks* for a patent from the Government of the United States, for the said *Slime* Mining Claim, vein, lode, deposit, and the surface ground so officially surveyed and platted.

WM. H. PARKS.

Subscribed and sworn to before me, this *first* day of *November*, *1894*, and I hereby certify that I consider the above deponent a credible and reliable person, and that the foregoing affidavit, to which was attached the field-notes of survey of the *Slime* mining claim, was read and examined by him before his signature was affixed thereto and the oath made by him.

[SEAL.]

JOHN JAMES,  
Notary Public.

[The above is slightly changed in applying to placer mines.]

NOTE.—Under the provisions of sec. 1 of the Act of Congress of January 22, 1880, his application may be made by an agent, when the claimant for patent is not a resident of or within the land district.

The applicant should immediately cause to be posted, in a conspicuous place upon the mining claim, the following notice:

**No. 204.—Notice of Application for a United States Patent  
—Form H.**

Notice is hereby given that in pursuance of the Act of Congress, approved May 10, 1872, "To promote the development of the mining resources of the United States," *Samuel Lux* and *George Miller*, claiming *three thousand* linear feet of the vein, lode, or mineral deposit, bearing gold, with surface ground *three hundred* feet in width, lying, being, and situate within the *Chuck* Mining District, County of *Lane*, and State of *Oregon*, has made application to the United States for a patent for the said mining claim, which is more fully described as to metes and bounds by the official plat, herewith posted, and by the field-notes of survey thereof, now filed in the office of the Register of the district of lands subject to sale at *Salem*, which field-notes of survey described the boundaries and extent of said claim on the surface, with magnetic variations at 17° east, as follows, to wit:

[Description.]

the said mining claim being of record in the office of the Recorder of *Tar Camp*, at *Millerville*, in the county and State aforesaid, the presumed general course or direction of the said vein, lode, or mineral deposit being shown upon the plat posted herewith, as near as can be determined from present developments, this claim being for *three thousand* linear feet thereof, together with the surface ground shown from the official plat posted herewith, the said vein, lode, and mining premises hereby sought to be patented, being bounded as follows, to wit:

[Description.]

The said claim being designated as lot number *seven* in the official plat posted herewith.

Any and all persons claiming adversely the mining ground, vein, lode, premises, or any portion thereof, so described, surveyed, platted, and applied for, are hereby notified that unless their adverse claims are duly filed, as according to law and the regulations thereunder, within sixty days from the date hereof, with the Register of the United States Land Office, at *Salem*, in the State of *Oregon*, they will be barred, in virtue of the provisions of said statute.

Dated on the ground, this *third* day of *May*, 1894.

NOTE.—At the time of filing the application for patent, the claimant should also introduce the proof indicated in the forms. Also, an abstract of title, which must show the possessory title to be in the applicant. This abstract should contain memoranda of all the deeds and incumbrances appearing of record in the office of the Recorder of the mining district or county, as the case may be, and must be certified by such Recorder to be a correct abstract. Where there have been no transfers, a certificate to that effect by the Recorder, attached to the certified copy of the certificate of location, will be required.



## No. 205. — Proof of Posting Notice and Diagram on the Claim—Form I.

STATE OF California, }  
 County of Butte. } ss.

*John Davis* and *John Williams*, each for himself, and not one for the other, being first duly sworn according to law, deposes and says, that he is a citizen of the United States, over the age of twenty-one years, and was present on the *third* day of *May, 1894*, when a plat representing the claim, and certified to as correct by the United States Surveyor-General of *California*, and designated by him as Lot No. 9, together with a notice of the intention of *John Davis* and *John Williams* to apply for a patent for the mining claim and premises so platted, was posted in a conspicuous place upon said mining claim to wit, upon an *oak stump*, where the same could be easily seen and examined; the notice so conspicuously posted upon said claim being in words and figures as follows, to wit:

Notice of the application of *John Davis* and *John Williams* for a United States patent.

"Notice is hereby given that in pursuance of Chap. VI., of Tit. 32, of the Revised Statutes of the United States," *John Davis* and *John Williams*, claiming *three thousand* linear feet of the vein, lode, or mineral deposit, bearing *gold*, with surface ground, *three thousand* feet in width, lying and being situated within the *Jones Mining District*, County of *Butte*, and State of *California*, have made application to the United States for a patent for the said mining claim, which is more fully described as to metes and bounds by the official plat herewith posted, and by the field notes of survey thereof, now filed in the office of the Register of the district of lands subject to sale at *Sacramento City, California*, which field notes of survey describe the boundaries and extent of said claim on the surface, with magnetic variation at *seventeen degrees east*.

[Description.]

The said mining claim being of record in the office of the Recorder of *Mines*, at *Chico*, in the county and State aforesaid, the presumed general course or direction of the said vein, lode, or mineral deposit being shown upon the plat posted herewith, as near as can be determined upon present developments, this claim being for *three thousand* linear feet thereof, together with the surface ground shown upon the official plat posted herewith, the said vein, lode, and mining premises hereby sought to be patented, being bounded as follows, to wit:

[Description.]

The said claim being designated as Lot No. 27, in the official plat posted herewith.

Any and all persons claiming adversely the mining ground, vein, lode, premises, or any portion thereof, so described, surveyed,

platted, and applied for, are hereby notified that unless their adverse claims are duly filed as according to law and the regulations thereunder, within sixty days from the date hereof, with the Register of the United States Land Office, at *Sacramento*, in the *State of California*, they will be barred, in virtue of the provisions of said statute.

Dated on the ground, this *third* day of *May*, 1894.

Subscribed and sworn to before me this *third* day of *May*, 1894, and I hereby certify that I consider the above deponents credible and reliable witnesses, and that the foregoing affidavit and notice were read by each of them before their signatures were affixed thereto and the oath made by them.

[SEAL.]

JOHN SMALL,  
Notary Public.

NOTE.—The notice to be posted on the claim with the plat, is given in the above form.

### No. 206.—Affidavit of Five Hundred Dollars Improvements —Form K.

STATE OF *California*, }  
County of *Sierra*. } ss.

*Henry Strange* and *Harvey Hill*, of lawful age, being first duly sworn according to law, depose and say that they are acquainted with the *Slug Canyon* Mining Claim in *Slope* Mining District, county and State aforesaid, for which they have made application for patent under the provisions of Chap. VI., of Tit. 32, Revised Statutes of the United States, and that the labor done and the improvements made thereon by the applicant and his grantors exceed five hundred dollars in value, and said improvements consist of a tunnel run in and through the center of said ground five hundred feet in length, costing over ten thousand dollars.

(Subscribed and sworn to.)

### No. 207.—Proof of Labor—Form L.

STATE OF *California*, }  
County of *Sierra*. } ss.

Before me the subscriber, personally appeared *A. Brown*, who being duly sworn, says that at least *one thousand* dollars' worth of labor or improvements were performed or made upon the *Fast Man* Claim, situated in *Black Horse* Mining District, *Sierra* County, State of *California*, during the year ending *January 3*, 1894. Such expenditure was made by or at the expense of the owners of said claim, for the purpose of holding said claim.

(Subscribed and sworn to.)

### No. 208.—Agreement of Publisher—Form N.

The undersigned, publisher and proprietor of the *Mountain Messenger*, a weekly newspaper, published at *Downieville*, County

of *Sierra*, and State of *California*, does hereby agree to publish a notice, dated U. S. Land Office, *May 3, 1894*, required by the provisions of Chapter VI. of Title 32, Revised Statutes of the United States, the intention of *Harvey Hill*, to apply for a patent for his claim on the *Oro Lode*, situated in *Piety Hill* Mining District, County of *Sierra*, State of *California*, and to hold the said *Hill* alone responsible for the amount due for publishing the same. And it is hereby expressly stipulated and agreed that no claim shall be made against the Government of the United States, or its officers or agents, for such publication.

Witness my hand and seal, this *ninth* day of *May, 1894*.

NOTE.—At the same time may be appropriately filed, as the case may require, either of Forms 209, 210, 211, or 212 (O, P, Q, or R).

### No. 209.—Power of Attorney—Form O.

KNOW ALL MEN BY THESE PRESENTS: That we, *Henry Brown* and *John Sales*, do hereby constitute and appoint *S. B. Davidson* as our attorney-in-fact, for us and in our names to make application to the United States for the entry and purchase of certain Government lands, in *Piety Hill* Mining District, *Sierra* County, State of *California*, known as the *Oro* Mining Claim and premises, and to have the same surveyed, and to take any and all steps that may be necessary to procure from the Government of the United States a patent to the said lands and premises, granting the same to us. And to do all other acts appertaining to the said survey and entry aforesaid as we ourselves could do by our own act and in our own proper person.

In witness whereof, *etc.*

(Acknowledged before Notary.)

### No. 210.—Proof of Ownership and Possession in Case of Loss or Absence of Mining Records—Form P.

STATE OF *California*,  
County of *Sierra*. } ss.

*Harvey Hill* and *Henry Purdy*, each for himself, and not one for the other, being first duly sworn according to law, deposes and says, that he is a citizen of the United States, over the age of twenty-one years, and a resident of *Sierra* County, State of *California*, and has resided in *Piety Hill* Mining District, wherein the *Oro* Mine is situated, since the *third* day of *May, 1868*. That since said date he has been acquainted with the *Oro* Mine, and with the possessors and workers thereof. That said mine was located and has been possessed and worked in accordance with the customs and usages of miners in said district, and in conformity with the rules and regulations governing the location, holding, and working of mining claims, in force and observed in the State of *California*. That there are no written records known to deponent existing in said mining district. That affiant is cred-



ibly informed and believes that the *Oro Mine* was located in the year 1868, and that if any record was made of said location, and of the names of the locators, the same has not been in existence for a long number of years past, and that by reason thereof the names of the locators cannot now be ascertained, and no abstract of title from locators to the present owners can be made. That the possession of applicant and his predecessors in interest of said *Oro Mine* has been actual, notorious, and continuous, to the positive knowledge of deponent, since his residence in said mining district, and that such possession has been perfected and maintained in conformity with mining usages and customs, and had been acquiesced in and respected by the miners of said district. That applicant's right to said *Oro Mine* is not in litigation within the knowledge of affiant, and that no action or actions have been commenced affecting the right to said mine since his acquaintance therewith (and that the time for the commencement thereof, as required to be instituted under the provisions of the Statute of Limitations of the State of *California*, has long since elapsed). That applicant and his predecessors in interest have expended in the improvement, development, and working of said mine a sum of money exceeding *one hundred* dollars, as follows, to wit: *ten thousand* dollars.

Subscribed and sworn to before me, this *eighth* day of *May*, 1894, and I hereby certify that the aforementioned *Henry Purdy*, *Harvey Hill*, *Samuel Davis*, and *S. B. Davidson* are credible and respectable persons, to whose affidavits full faith and credit should be given.

[SEAL.]

HENRY BRIGGS,

Notary Public.

NOTE.—This should be sworn to by at least two respectable persons, and by the applicant for patent.

**No. 211.—Non-Mineral Affidavit—Form Q.** (To be used in case of a mill-site.)

STATE OF *California*,                    }  
County of *Sierra*.                    } ss.

*A. Aaron Smith* and *Geo. C. Moreham*, of said county and State, being first duly sworn, each for himself deposes and says, that he is well acquainted with the *Glide Claim*, situated in *Slum Mining District*, County of *Sierra*, and State of *California*, claimed by *W. W. Slow*, applicant for United States patent therefor; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there

is not within the limits of such land, in his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for minerals during any part of the year by any person or persons; that said land is essentially non-mineral land, and that he has no interest whatever in said land.

Subscribed and sworn to before me, this *third* day of *May*, 1894, and I hereby certify that the foregoing affidavit was read to *each* of the said *subscribers* previous to his name being subscribed thereto; and that deponent is a respectable person, to whose affidavit full faith and credit should be given.

[SEAL.]

### No. 212.—Proof that no Known Veins Exist in a Placer Mining Claim—Form R.

STATE OF *California*,  
County of *Nevada*. } 38.

*Aaron A. Jones* and *Blake Alverson*, of the said county and State, being first duly sworn, each for himself, deposes and says, that he is well acquainted with the *Slips* Placer Mining Claim, embracing *one thousand acres*, situated in the *Flow* Mining District, in the County of *Nevada*, and State of *California*, owned and worked by *F. F. High*, applicant for United States patent; that for many years he has resided near, and often been upon the said mining premises, and that no known vein or veins of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, exist on said mining claim, or on any part thereof, so far as he knows, and he verily believes that none exist thereon.

Subscribed and sworn to before me, this *tenth* day of *January*, 1894.

NOTE.—In case any known mines exists within the exterior boundaries of the placer claim, the names of such known veins should be given, to be sworn to by the applicant and one or more other persons.

Directly after the filing of the application for patent, with accompanying proof, the Register of the Land Office will designate a newspaper, as published nearest the land sought to be patented, to publish the following notice for sixty days:

### No. 213.—Application for a Patent—Form S.

U. S. LAND OFFICE, *May 3*, 1894.

Notice is hereby given that *Harry Hill*, whose Post Office address is *Downieville*, *Sierra County*, *California*, has this day filed his application for a patent for *nine thousand* linear feet of the *Oro* Mine or vein bearing, with surface ground *three hundred* feet in width, situated in *Pietty Hill* Mining District, County of *Sierra*, and State of *California*, and designated by the field notes and official plat on file in this office as lot number *10*, in Township *9*,

Range 7 east, of *Mt. Diablo* base and Meridian, said lot number 10 being as follows, to wit:

[Description.]

NOTE.—At the expiration of the period of legal publication of notice of application, the claimant should file with the land officers the proofs indicated by Forms T, U, V.

### No. 214.—Proof of Publication—Form T.

STATE OF *California*, }  
County of *Sierra*. } ss.

*Vaugh Downer*, being duly sworn, deposes and says, that he is the proprietor of the *Mountain Messenger*, a newspaper published in *Sierra County*, in the State of *California*.

That the notice, of which a copy is hereto attached, was first published in said newspaper in its issue dated the *ninth* day of *January*, 1894, and was published in each issue of said newspaper for *sixty days* thereafter the full period of *sixty days*, the last publication thereof being in the issue dated the *nineteenth* day of *August*, 1894.

(Subscribed and sworn to.)

### No. 215.—Proof that Plat and Notice Remained Posted on Claim During Time of Publication—Form U.

STATE OF *California*, }  
County of *Sierra*. } ss.

*Harry Hill*, being first duly sworn according to law, deposes and says that he is claimant (and co-owner with), *Henry Strange*, in the *Oro Mining Claim*, *Piety Hill Mining District*, *Sierra County, California*, the official plat of which premises, together with the notice of intention to apply for a patent therefor, was posted thereon on the *ninth* day of *January*, 1894, as fully set forth and described in the affidavit of *Geo. Brown*, and *Samuel Wilkins*, dated the *ninth* day of *January*, 1894, which affidavit was duly filed in the office of the Register at *Sacramento*, in this State; and that the plat and notice so mentioned and described remained continuously and conspicuously posted upon said mining claim from the *ninth* day of *January*, 1894, until and including the *nineteenth* day of *August*, 1894, including the sixty days period during which notice of said publication for patent was published in the newspaper.

NOTE.—A publication in a weekly newspaper for nine weeks is not a publication for sixty days. There must be ten insertions. *Sickels, Mining Laws and Decisions*, 324.

It must be published in the newspaper nearest the claim. *Id.* 68.

It must be made with the knowledge of the Register of the head office. *Id.* 71.

One notice may include several tracts. *Id.* 342.

Subscribed and sworn to before me, this *twentieth* day of *August*, 1894, and I hereby certify that the foregoing affidavit was read to the said *Harry Hill* previous to his name being subscribed thereto; and that deponent is a respectable person, to whose affidavit full faith and credit should be given.

[SEAL.]



**No. 216.—Statement of Fees and Charges—Form V.**

STATE OF *California*, }  
                   County of *Sierra*. } ss.

*Harry Hill*, being first duly sworn according to law, deposes and says, that he is the applicant for patent for the *Oro* lode in *Piety Hill* Mining District, County of *Sierra*, State of *California*, under the provisions of Chap. VI., of Tit. 32, of the Revised Statutes of the United States, and that in the prosecution of said application he has paid out the following amounts, viz.: to the credit of the Surveyor-General's office, *one hundred* dollars; for surveying, *ten* dollars; for filing in the local Land Office, *fifty* dollars; for publication of notice, *fifty* dollars; and for the land embraced in his claim, *one thousand* dollars.

(Subscribed and sworn to.)

[SEAL.]

In due time, if no adverse claim has been filed, or if filed, but no suit has been commenced thereon within the period prescribed by law, the claimant may make application to purchase. The Register should thereupon certify to the fact of the posting of notice in the Land Office of the application for patent; and upon payment to the Receiver of the purchase money should issue his certificate of entry.

**No. 217.—Register's Certificate of Posting Notice for Sixty Days—Form W.**

UNITED STATES LAND OFFICE AT  
*San Francisco, State of California, 1894.*

I HEREBY CERTIFY that the official plat of the *Gold* lode designated by the Surveyor-General as lot No. 10, was filed in this office on the *twentieth* day of *May*, 1894, and that the attached notice of the intention of *Samuel Brown* to apply for a patent for the mining claim, or premises, embraced by said plat, and described in the field notes of survey thereof filed in said application, was posted conspicuously in this office on the *ninth* day of *June*, 1894, and remained so posted until the *twentieth* day of *August*, 1894, being the full period of sixty consecutive days during the period of publication as required by law; and that said plat remained in this office during that time, subject to examination, and that no adverse claim thereto has been filed.

NOTE.—The notice posted in the office should be attached to this certificate; a copy of the notice published is the one usually posted in the Register's office.

[These forms, which are designed particularly for lode, or quartz, claims, may also, with slight modification, be used for placer claims.]

The following forms may appropriately be used:

**No. 218.—Certificate that no Suit is Pending—Form W. W.**

STATE OF *California*, }  
                   County of *Sierra*. } ss.

I, *Henry Spaulding*, Clerk of the *Superior* Court, in and for *Sierra* County, *California*, do hereby certify that there is now no

suit or action of any character pending in said Court, involving the right of possession to any portion of the *Oro* mining claim, and that there has been no litigation before said Court affecting the title to said claim, or any part thereof, for *twenty* years last past, or within the period prescribed by the Statute of Limitations, to wit: *five* years, other than what has been finally decided in favor of *Harvey Hill*.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, at my office, in *Downieville*, this *twentieth* day of *June*, 1894.

### No. 219.—Protest and Adverse Claim—Form X.

UNITED STATES LAND OFFICE, } ss.  
State of California.

In the matter of the application of *Harvey Hill*, for a United States patent for the *Oro* lode, or mining claim, and the land and premises appertaining to said mine, situated in the *Piety Hill* Mining District, in *Sierra* County, State of *California*.

To the Register and Receiver of the United States Land Office, at *San Francisco*, and to the above-named applicant for patent for the *Oro* lode:

You are hereby notified that *Albert Chase*, of the City of *Stockton*, County of *San Joaquin*, and State of *California*, and a citizen of the United States of America, is the lawful owner and entitled to the possession of *three thousand* feet of the said *Oro* lode, or mine, described in said application, as shown by the diagram posted on said claim, and a copy thereof filed in the Land Office with said application, and as such owner this contestant, the said *Albert Chase*, does protest against the issuing of a patent thereon to said applicant, and does dispute and contest the right of said applicant therefor.

And this contestant does present the nature of his adverse claim, and does fully set forth the same in the affidavit hereto attached, marked Exhibit A, and the further exhibits thereto attached and made part of said affidavit.

The said *Albert Chase* therefore respectfully asks the said Register and Receiver that all further proceedings in the matter be stayed until a final settlement and adjudication of the rights of this contestant can be had in a Court of competent jurisdiction.

(Place and date.)

#### EXHIBIT A.

STATE OF California, } ss.  
City and County of San Francisco.

*Albert Chase*, being first duly sworn, deposes and says, that he is a citizen of the United States, born in the State of *California*, and is now residing in *Stockton*; that he is the contestant and protestant named in, and who subscribed the notice and protest

hereto annexed. Affiant further says that he is the owner by purchase and in possession of the (adverse) lode, or vein, of quartz and other rock in place, bearing gold and other metals. That the said lode is situated in the Piety Hill Mining District, Sierra County, State of California.

[The history of the lode should be given in full; for instance, as follows:]

*This affiant further says, that on the day of location the premises hereinafter described were mineral lands of the public domain, and entirely vacant and unoccupied, and were not owned, held, or claimed by any person or persons as mining ground or otherwise, and that while the same were so vacant and unoccupied and unclaimed, to wit: on the first day of January, 1894, [name locators], each and all of them being citizens of the United States, entered upon and explored the premises, discovered and located the said Oro lode, and occupied the same as mining claims. That the said premises so located and appropriated consist of fifteen hundred feet in a northerly direction, and fifteen hundred feet in a southerly direction, as will fully appear by reference to the notice of location, a duly certified copy whereof is hereunto annexed, marked Exhibit B, and hereby made a part of this affidavit. That the locators, after the discovery of said Oro lode, drove a stake on said lode on the discovery claim, erected a monument of stone around said stake, and placed thereon a written notice of location describing the claim so located and appropriated, giving the names of the locators and quantity taken by each, and after doing all the acts, and performing all the labor required by the laws and regulations of said Piety Hill Mining District, and State of California, the locators of said lode caused said notice to be filed and recorded in the proper books of record in the Recorder's Office in said district, on the ninth day of January, 1894.*

*Affiant further says, that the said locators remained continuously in possession of said lode, working upon the same, and within twelve months from the date of said location had done and performed work and labor on said location in mining thereon and developing the same, more than three hundred and sixty-five days' work, and expended on said location more than nine hundred dollars, and by said labor and money expended upon the said mining location and claim, had developed the same, and extracted therefrom more than one thousand tons of ore.*

*And affiant further says, that said locators, in all respects, complied with every custom, rule, regulation, and requirement of the mining laws, and every rule and custom established and in force in said Piety Hill Mining District, and thereby became and were owners (except as against the paramount title of the United States) and the rightful possessors of said mining claims and premises.*

*And this affiant further says, that said locators proved and established, to the satisfaction of the Recorder of said mining district, that they had fully complied with all the rules, customs, regulations,*



and requirements of the laws of said district, and thereupon the said Recorder issued to the locators of said lode certificates confirming their titles and rights to said premises.

That the said lode was located and worked by the said locators as tenants in common, and they so continued in the rightful and undisputed possession thereof from the time of said location until on or about the tenth day of June, 1894, at which time the said locators and owners of said lode formed and organized under the laws of the State of California, and incorporated under the name of the "Oro Gold Mining Company;" and on the tenth day of June, 1894, each of the locators of said lode conveyed said lode, and each of their rights, titles, and interests in and to said lode, to said "Oro Gold Mining Company."

On the said tenth day of June, 1894, the said company entered into and upon said lode, and was seized and possessed thereof, and every part and parcel of the same, and occupied and mined thereon until the thirtieth day of August, 1894, at which time the said mining company sold and conveyed the same to this affiant, which said several transfers and conveyances will fully appear by reference to the abstract of title and paper hereto attached, marked Exhibit D, and made a part of this affidavit.

[In case of individual transfers.]

And this affiant further says, that the said John Jones, who located claim No. 10, northwesterly of the said Oro lode, and the said John Smith, who located claim No. 11, northwesterly thereon, were seized and possessed of said claims, and occupied and mined thereon until the tenth day of June, 1894, at which time the said Smith and Jones sold and conveyed the same to the said corporation, and thereupon the said corporation was seized and possessed of said mining claims and locations, and occupied and mined thereon until the thirtieth day of September, 1894, at which time the said corporation sold and conveyed the same to this affiant, as will fully appear by reference to the abstract of title and paper hereto attached, marked Exhibit D, and which this affiant hereby makes a part of this his affidavit.

Affiant further says, that he is now and has been in the occupation and possession of the said lode since the thirtieth day of August, 1894, and that said lode and mining claims were located, and the title thereto established, several years before said (applied for) Oro lode was located.

Affiant further says, that said Oro lode, as shown by the notice and diagram posted on said claim, and the copy thereof filed in the United States Land Office, with said application for a patent, crosses and overlaps said Oro lode, and embraces about thirty hundred feet in length by three hundred feet in width of the said Oro lode, the property of this affiant, as fully appears by reference to the diagram or map duly certified by the U. S. Deputy Surveyor, hereto attached, marked Exhibit C, and which diagram presents a correct description of the relative locations of the said (adverse) lode, and of the pretended (applied for) lode.

*Affiant further says, that he is informed and believes that said applicant for patent well knew that affiant was the owner in possession and entitled to the possession of so much of said mining ground embraced within the survey and diagram of said applications, as is hereinbefore stated, and that this affiant is entitled to all the gold and other metal in said (adverse) lode, and all that may be contained within a space of three hundred feet on each side of said (adverse) lode.*

*And affiant further says, that this protest is made in entire good faith, and with the sole object of protecting the legal rights and property of this affiant in the said (adverse) lode and mining premises.*

(Subscribed and sworn to.)

#### SURVEYOR'S CERTIFICATE.

On the digram marked Exhibit C, the Surveyor must certify in effect as follows:

I hereby certify that the above diagram correctly represents the conflict claimed to exist between the *Oro* and *Oro Gold* lodes, as actually surveyed by me. And I further certify, that the value of the labor and improvements on the (adverse) lode exceeds *five hundred* dollars, and said improvements consist of [*state in full.*]

(Place and date).

#### No. 220.—Notice of Forfeiture—Form Y.

STATE OF *California*, COUNTY OF *Sierra*, 1894.

To *Albert Chase*:

You are hereby notified that I have expended *three hundred* dollars in labor and improvements upon the *Oro* lode, as will appear by certificate filed *August 1, 1894*, in the office of the Recorder of said county (or district), in order to hold said premises under the provisions of section 2324, Revised Statutes of the United States, being the amount required to hold the same for the year ending *August 30, 1894*. And if within ninety days from the service of this notice (or within ninety days after this notice by publication), you fail or refuse to contribute your proportion of such expenditure as co-owner, your interest in said claim will become the property of the subscriber under said section 2324.

NOTE.—At the expiration of 180 days, this printed notice should be recorded, with the affidavit of the newspaper publisher that the same was published for the period of ninety days, together with the affidavit of the party signing the notice, to the effect that one or more of the co-owners named in the published notice have not paid their share of the expenditure. This completes the record title.

#### No. 221.—Miner's Lien—Form Z.

KNOW ALL MEN BY THESE PRESENTS: That I, *Henry Clay*, of the County of *Sierra*, State of *California*, do hereby give notice of my intention to hold and claim a lien, by virtue of the statute in

such case made and provided, upon [describe premises], with all improvements and appurtenances, situated in *Piety Hill Mining District, County of Sierra, State of California*.

The said lien being claimed and held for and on account of work done in and upon said premises, from the *first day of June, 1894*, to the *first day of July, 1894*.

The total value of the said work and labor being *fifty* dollars, upon which there has been paid the sum of *three* dollars, leaving a balance of *forty-seven* dollars still due, owing, and unpaid to me, the said claimant.

STATE OF *California*,  
County of *Sierra*. } ss.

On this *first day of July, 1894*, personally appeared before me the above-named *Henry Clay*, and who, being by me first duly sworn on his oath, states that the abstract of indebtedness, mentioned and described in the foregoing notice, is true and correct, and that there is still due and owing to him, from the said *Oro Mine*, for the labor aforesaid, the sum of *forty-seven* dollars.

Subscribed and sworn.

NOTE.—For materials insert "goods furnished and delivered to owners of said premises, for use on said premises, and which were used on said premises." Below, substitute "materials furnished, to wit: powder, lumber, etc., as per bill annexed," in place of "work and labor."

## MORTGAGES.

### No. 222.—Mortgage Chattel.

This mortgage, made the *first day of May*, in the year eighteen hundred and *ninety-four*, by *Henry Smith*, of the *City and County of San Francisco*, in the *State of California*, by occupation a machinist, mortgagor, to *John Jones*, of the *City and County of San Francisco*, *State of California*, by occupation a banker, mortgagee, witnesseth:

That said mortgagor mortgages to the said mortgagee all that certain personal property, situated and described as follows, to wit:

[Description.]

As security for the payment to the said *John Jones*, the said mortgagee, of *one thousand* dollars, in *gold coin* of the United States of America, on the *first day of January*, in the year eighteen hundred and *ninety-four*, without interest thereon, at the rate of *one* per cent. per month, according to the terms and conditions of a certain promissory note of even date herewith, and in the words and figures following, to wit:

\$1000.

*San Francisco, May 1, 1894.*

Eight months after date, without grace, for value received, in *gold coin* of the United States, I promise to pay to *John Jones*, or



order, at Number 534 California Street, San Francisco, California, the sum of one thousand dollars, in gold coin of the United States, of the standard issued from the mint of the United States during the year 1872, with interest thereon from date until paid, at the rate of one per cent. per month; said interest payable in United States gold coin, of the same standard, monthly, in advance; and I agree that in case of default in the payment of the said principal sum, or of any amount of monthly interest, as it shall fall due, that such amounts shall bear interest from the date of their respective maturity until paid, at the rate of two per cent. per month, and that if said monthly interest, or any part thereof, is not paid within thirty days after the same becomes due and payable, then the whole of said principal sum and interest shall forthwith become due and payable at the election of the holder of this note. This note is secured by a mortgage bearing even date herewith.

HENY SMITH.

It is also agreed, that if the mortgagor shall fail to make any payment as in the said promissory note provided, then the mortgagee may take possession of said property, using all necessary force so to do, and may immediately proceed to sell the same in the manner provided by law, and from the proceeds pay the whole amount in said note specified, and all costs of sale, including counsel fees, not exceeding ten per cent. upon the amount due, paying the surplus to the said mortgagor.

(Signed.)

STATE OF California, }  
City and County of San Francisco. } 88.

Henry Smith, the mortgagor in the foregoing mortgage named, and John Jones, the mortgagee in said mortgage named, being duly sworn, each for himself doth depose and say, that the aforesaid mortgage is made in good faith and without any design to hinder, delay, or defraud creditors.

NOTE 1.—In California, C. C., sec. 2956. For affidavit, see secs. 2956, 1180-1206. To be valid as to third parties, it must be verified and recorded. The California Statutes prescribe the property that may be mortgaged without actual delivery to the mortgagee. Nothing more is necessary than reference to the statutes. All other personal property, when mortgaged or hypothecated, to be valid, except as between the parties, must be delivered to the mortgagee or pledgee, and the change of possession must be continuous—not interrupted. In California, if found in possession of the mortgagee, it may be seized for the debt of the mortgagor; but as to all the property permitted by the statute to be mortgaged without delivery of possession, of course possession may be retained, provided the mortgage contract is recorded.

NOTE 2.—In Nevada, Gen. Stats., secs. 2635-2644. Also Stats. 1887, p. 66.

NOTE 3.—In Idaho, Rev. Stats., secs. 3385-3398. Also Stats. 1890-91, p. 181.

NOTE 4.—In Montana, all interests in personal property capable of being transferred may be mortgaged; but it must remain in the possession of the mortgagee unless the mortgage provides that the property may remain in the possession of the mortgagor. If so, it may remain, but the mortgage must be acknowledged and recorded. If such mortgage is not satisfied at the expiration of one year, it is no longer valid against the creditors of the mortgagor, unless an affidavit is filed giving all the data and particulars of the mortgage. C. C., secs. 3861-3876.

NOTE 5.—In Utah substantially the same as in California. Comp. Laws, secs. 2801-2814. Also personal property may be mortgaged.

NOTE 6.—North Dakota, sec. 4383, Comp. Laws; Also Stats. 1890, p. 147.

NOTE 7.—South Dakota, sec. 4388 Comp. Laws.

NOTE 8.—In Wyoming the same substantially as in Montana. If not satisfied when due, then it runs sixty days, and the affidavit required in Montana must be filed. Stat 1890, p. 86.

NOTE 9.—In Washington all kinds of personal property may be mortgaged. The affidavit is the same as in California, and it must be acknowledged and recorded. Hill's Stats., secs. 1650-1658.

NOTE 10.—In Oregon there appears to be no difference between a mortgage of real or personal property. When the condition of the mortgage is broken, the mortgagee may take possession. Until then the mortgagor retains possession. Hill's Laws, secs. 3837, 3838. Stats. 1893, p. 150.

NOTE 11.—In Colorado a mortgage of personal property is void as to third persons, unless possession is delivered to and remains in the mortgagee. All personal property may be mortgaged.

The form of acknowledgment enacted is: "This mortgage was acknowledged before me by A. B., this 1st day of October, 1894." That is all there is of it.

Such mortgage may be recorded in the Recorder's office of the county where the property was mortgaged. The mortgage will be good if the amount secured is not over \$2,500 until the maturity of the last installment, but not exceeding two years, and so on, as the amount of the debt increases, provided there be recorded annually in the records of the county where the mortgage is recorded a sworn statement of the mortgagee, showing that the mortgage was given in good faith to secure the payment of the sum of money mentioned in the mortgage, and that the amount is unpaid, and if any part has been paid, how much, etc. If the mortgage is for less than \$300, it is valid when filed in the Recorder's office, provided the debt be due within six months. If a mortgagor sells the property mortgaged he is guilty of larceny. Hill's Stat., secs. 383-395. Stats. 1891, p. 124.

NOTE 12.—In Arizona the same substantially as in California, except any personal property may be mortgaged. Rev. Stats., secs. 2364-2372.

### No. 223.—Mortgage—Chattel—Another Form.

THIS MORTGAGE, made the *twenty-third* day of *August*, in the year eighteen hundred and *ninety-four*, by *John Smith*, resident of the County of *San Mateo*, State of *California*, by occupation a *farmer*, mortgagor, to *Richard Roe*, of the *City and County of San Francisco*, State of *California*, by occupation *hotel keeper*, mortgagee, witnesseth:

That said mortgagor mortgages to the said mortgagee all that certain personal property situated and described as follows, to wit:

[Description of Property.]

as security for the payment to said *Robert Roe*, the said mortgagee, of the sum of *two thousand five hundred* dollars in *gold coin* of the United States of America, on or before the *twenty-third* day of *November*, in the year eighteen hundred and *ninety-four*, with interest thereon, at the rate of *one and one-half* per cent. per month, according to the terms and conditions of a certain promissory note of even date herewith, and in the words and figures following, to wit:

\$2500.

SAN FRANCISCO, *August 23*, 1894.

*Ninety (90)* days after date, without grace, I promise to pay to *Robert Roe*, or order, the sum of *twenty-five hundred (2500)* dollars, with interest thereon, at the rate of *one and one-half* per cent. per month, from date until paid. Principal and interest payable only in United States *gold coin*; value received. And in the event of a suit to enforce the collection of this note, or any portion thereof, I further agree to pay the additional sum of *five* per cent. in like gold coin, upon the amount found due, as attorney fees in said suit. *This note is secured by chattel mortgage of even date.*

JOHN SMITH.



But in case default shall be made in the payment of the said principal sum, or any one of said installments of interest, then it shall and may be lawful for, and the said party of the first part does hereby authorize and empower the said *mortgagee*, his executors, administrators, or assigns, with the aid and assistance of any person or persons, to enter the premises, or such other place or places, as the said goods or chattels are or may be placed, and take and carry away the said goods and chattels, and sell and dispose of the same for the best price they can obtain by due process of law, and out of the money arising therefrom to retain and pay the said sum above mentioned, and interest as aforesaid, and all charges touching the same, and counsel fees, not to exceed *five* per cent. upon the full amount which shall then be unpaid, rendering the overplus, if any, unto the said *mortgagor*, or to his executors, administrators, or assigns. And until default be made in the payment of the said sum of money, the said party of the first part, his executors, administrators, and assigns may remain and continue in the quiet and peaceable possession of the said goods and chattels, and in the full and free use and enjoyment of the same.

In witness whereof, *etc.*

(Signed and verified.)

#### No. 224.—Mortgage—Chattel—Code Form.

This mortgage, made the *first* day of *May*, in the year *1894*, by *Albert Mix*, of *Oakland*, *Alameda* County, State of *California*, by occupation a *machinist*, mortgagor, to *Clement Cameron*, of the same place, by occupation a *broker*, mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee *all the following described property*:

[Description.]

As security for the payment to him of *one thousand* dollars, on the *first* day of *January*, in the year *1894*, with interest thereon according to the terms and conditions of a certain promissory note, in words and figures as follows, to wit:

\$1000.

SAN FRANCISCO, *May 1*, 1894.

*Eight months* after date, without grace, for value received in gold coin of the United States, I promise to pay to *Clement Cameron*, or order, the sum of *one thousand* dollars in gold coin of the United States, of the standard issued from the Mint of the United States, during the year *1872*, with interest thereon, from date until paid, at the rate of *one* per cent. per month; said interest payable in United States gold coin of the same standard, monthly, in advance; and I agree that in case of default in the payment of the said principal sum, or of any amount of monthly interest, as it shall fall due, that such amounts shall bear interest from the date of their respective maturity until paid, at the rate of *two* per cent. per month,



and that if said monthly interest, or any part thereof, is not paid within thirty days after the same becomes due and payable, then the whole of said principal sum and interest shall forthwith become due and payable, at the election of the holder of this note. This note is secured by a mortgage bearing even date herewith.

ALBERT MIX.

NOTE.—C. C., sec. 2956.

**No. 225.—Mortgage—Chattel—Crop.**

THIS INDENTURE, made the *seventh* day of *June*, in the year of our Lord one thousand eight hundred and *ninety-four*, between *James Robinson*, of the County of *Mendocino*, in the State of *California*, by occupation a *farmer*, mortgagor, and party hereto of the first part, and *Robert Anderson*, of the same county and State, by occupation a *capitalist*, mortgagee and party hereto of the second part, witnesseth:

That the said mortgagor, for and in consideration of *the sum of two thousand dollars, gold coin* of the United States, to him in hand paid, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, and convey unto the said party of the second part, and to his heirs and assigns forever, the following growing crop, viz., the crop of *wheat* now being, standing, and growing upon that certain piece or parcel of land lying and being in the said County of *Mendocino*, State of *California*, and particularly described as follows, viz:

[Description.]

To have and to hold the above mentioned and described crop, subject to the provisions hereinafter contained.

Provided, nevertheless, and these presents are upon the express condition that if the said party of the first part, his heirs, executors, administrators, or assigns, shall well and truly pay, or cause to be paid, unto the said party of the second part, his executors, administrators, or assigns, the sum of *two thousand dollars*, in United States *gold coin*, on the *seventh* day of *October*, *1894*, with interest thereon at the rate of *one* per cent. per *month* from the date hereof, until paid, according to the true intent and meaning of a certain promissory note, dated the said *seventh* day of *June*, *1894*, as by the said promissory note, reference thereunto being had, will more fully appear, then these presents shall be void. And the party of the first part doth hereby covenant and agree to and with the party of the second part, his heirs, and assigns, that he will well and carefully tend, take care of, and protect the said crop while growing and until fit for harvest, and then faithfully, and without delay, harvest, thresh, clean, and sack the same, and deliver the same immediately into the possession of the said party of the second part, or his assigns, to be by him held and disposed of, for the payment of the debt hereby secured; that in default

of any or either of the above acts to be done by the said party of the first part, the said party of the second part, or his assigns, may enter into the premises and take all necessary measures for the protection of said crop, and may retain possession thereof, and harvest, thresh, and sack the same; and all expenses so incurred, and all that may become necessary in the keeping and care of said crop, as well as the hauling, storing, and delivery thereof, shall be secured by this mortgage, and shall be first payable in *United States gold coin*, out of the money realized from the sale of said crop; that said party of the second part, or his assigns, shall, and may, at all times, enter into the premises to view the same, or to take any measures necessary for the protection of said crop or his interest therein; and that upon harvesting thereof, he shall be entitled to the immediate possession of the same, and may haul and store the same, at the expense of the said party of the first part; and he does for the purposes aforesaid make, constitute, and appoint the said party of the second part, or his assigns, his true and lawful attorney, with full power to enter upon said premises, and take possession of said crop, and take care of, protect, thresh, clean, and sack the same, in case of any default on his part of the covenants herein contained; and he does further authorize him, or his assigns, to take possession of said crop when harvested, to haul and store the same, to sell and dispose of the same, or any part thereof, at such time and times, and for such sum of money as he may deem proper, and most for the mutual advantage and benefit of all concerned, and out of the proceeds of said sale, first, to retain the costs and charges thereof and any and all expenses by the party of the second part incurred in the care and protection, harvesting, hauling, or storing the same, and commission for selling the same; second, to apply the residue to the payment of said note, rendering the overplus, if any there be, to the said party of the first part, or his assigns.

In witness whereof, *etc.*

STATE of California,                    }  
County of Mendocino.                } ss.

*James Robinson*, the mortgagor in the foregoing mortgage named, and *Robert Anderson*, the mortgagee in said mortgage named, each being duly sworn, each for *himself doth depose* and say, that the aforesaid mortgage is made in good faith, and without any design to hinder, delay, or defraud creditors.

(Subscribed and sworn to.)

#### NO. 226.—Mortgage—Short Form—Land.

THIS INDENTURE, made the *eighteenth* day of *May*, in the year of our Lord one thousand eight hundred and *ninety-four*, between *James Williams*, of the County of *Solano*, State of *California*, the party of the first part, and *William Johns*, of the same county, the party of the second part, witnesseth:



That the said party of the first part, for and in consideration of the sum of *one thousand and one hundred dollars, gold coin* of the United States of America, to him in hand paid, does by these presents grant, bargain, sell, and convey, unto the said party of the second part, and to his heirs and assigns forever, all that certain piece or parcel of land situate in the said County of *Solano*, State of *California*, bounded and described as follows:

[Description.]

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

This conveyance is intended as a mortgage to secure payment of *one thousand and one hundred dollars, gold coin of the United States, in five years from the day of the date of these presents, with annual interest, according to the condition of a certain promissory note, dated this day, executed by the said James Williams to the said William Johns*, and these presents shall be void if such payment be made, according to the tenor and effect thereof. But in case default be made in the payment of the principal or interest, as in *said note* provided, then the said party of the second part, his executors, administrators and assigns, are hereby empowered to sell the said premises, with all and every of the appurtenances, or any part thereof, in the manner prescribed by law; and out of the money arising from such sale to retain the said principal and interest, together with the costs and charges of making such sale, and *seven per cent.* for attorney's fees, and the overplus, if any there be, shall be paid by the party making such sale, on demand, to the said party of the first part, his heirs or assigns.

In witness whereof, *etc.*

JAMES WILLIAMS.

NOTE 1.—In California a distinction is made between a mortgage on land and on personal property. In many other places there is no difference, except in acknowledgment and verification. A mortgage on land is void, except as between the parties and those having notice, unless it be acknowledged and recorded in the county where the land is situated. If the land is in two counties, it must be recorded in each. An unrecorded mortgage is good between the parties and as to all persons having actual, or constructive, notice of it, even if it be not acknowledged. If a party is in possession of land, holding, under a mortgage not recorded, his claim will be prior to a purchaser, in good faith, who depended upon the records of the county for information. It is the duty of the purchaser to inquire as to the possession of the holder of the unrecorded mortgage. In all such transactions, notice is a question of fact. The same rule applies to deeds. C. C., secs. 1164-1171, 2921-2952.

NOTE 2.—In Nevada the same as in California. Gen. Stats., sec. 2593.

NOTE 3.—In Idaho, same as in California. Rev. Stats., secs. 2023, 3090-3377.

NOTE 4.—In Montana, same as in California. See notes to No. 222.

NOTE 5.—In Utah, same as in California. Comp. Laws, secs. 2610-2645.

NOTE 6.—In North Dakota, same as in California. Comp. Laws, secs. 3293-7.

NOTE 7.—In South Dakota, same as in North Dakota. Comp. Laws, secs. 3293-7.

NOTE 8.—In Wyoming, same as in California. Rev. Stats., secs. 15-32.

NOTE 9.—In Washington the filing or recording of an instrument is notice of its contents to the whole world. Hill's Codes, secs. 1430-1440.

NOTE 10.—In Oregon, see Hill's Laws, secs. 3002-3047.

NOTE 11.—In Colorado, see Mill's Annotated Stats., secs. 427-471.

NOTE 12.—In Arizona, Rev. Stats., secs. 2358-2363.



## No. 227.—Mortgage—Another Form.

THIS INDENTURE, made the *eighteenth* day of *May*, in the year of our Lord one thousand eight hundred and *ninety-four*, between *Judson Averill*, of the County of *Nevada*, State of *California*, the party of the first part, and *Charles Kent*, of said county, the party of the second part, witnesseth:

That the said party of the first part is justly indebted to the said party of the second part, in the sum of *ten thousand* dollars, *gold coin* of the United States of America, upon a certain promissory note made at the date hereof, by the said party of the first part, to and in favor of the party of the second part, in the words and figures following, to wit:

*May 13, 1894.*

*One year* after date, without *grace*, I promise to pay to *Charles Kent*, or order, the sum of *ten thousand* dollars, payable only in *gold coin* of the government of the United States, for value received, with interest thereon in like gold coin, at the rate of *one* per cent. per month from *date* until paid.

JUDSON AVERILL.

Now this indenture witnesseth: That for the purpose of securing the payment of the said promissory note and the interest thereon, as it shall become due and payable, the said party of the first part, for and in consideration of the premises, as also in consideration of the sum of *one* dollar, lawful money to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed, and confirmed, and does hereby grant, bargain, sell, convey, and confirm unto the said party of the second part, his heirs and assigns, all

[Description.]

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining.

To have and to hold the said premises, with all the tenements, hereditaments, and appurtenances thereunto belonging, unto the said party of the second part, his heirs and assigns forever.

Provided, nevertheless, that if the said party of the first part shall well and truly pay, or cause to be paid, the said promissory note, with the interest as it shall become due and payable thereon, according to the tenor and effect thereof, then in such case this indenture, and the estate hereby granted, shall be null and void, else to remain in full force and virtue.

But it is distinctly understood and agreed, that if the interest on said promissory note, or the principal thereof, shall not be punctually paid when the same becomes due and payable, as in said promissory note mentioned, then and in such case the principal sum of said promissory note and the interest shall be

deemed and taken to be wholly due and payable, and proceedings may forthwith be had by the said party of the second part, his heirs, executors, administrators, or assigns, for the recovery of the same, either by suit on said note or on this mortgage, anything in said note or in this indenture contained to the contrary thereof notwithstanding. And in any suit or other proceedings that may be had for the recovery of the said principal sum and interest, on either said note or this mortgage, it shall and may be lawful for the said party of the second part, his heirs, executors, administrators, or assigns, to include in the judgment that may be recovered, counsel fees and charges of attorneys and counsel employed in such foreclosure suit, not exceeding *one hundred* dollars and *ten* per cent. thereon, upon the amount due the plaintiff on said note and this mortgage, and if said suit is settled before judgment, the same fee and percentage shall be allowed, as well as all payments that the said party of the second part, his heirs, executors, administrators, or assigns, may make for his or their security, or on account of any taxes, charges, incumbrances or assessments whatsoever on the said premises.

In witness whereof, *etc.*

#### No. 228.—Mortgage Simple Form.

THIS MORTGAGE, made the *fourth* day of *February*, in the year eighteen hundred and *ninety-four*, by *John Doe*, of the County of *San Bernardino*, State of *California*, mortgagor, to *Richard Roe*, of the same place, mortgagee, witnesseth:

That the said mortgagor mortgages to the said mortgagee all that certain piece and parcel of land situate in the County of *San Bernardino*, State of *California*, bounded and described as follows, to wit:

[Description.]

As security for the payment to said mortgagee of *five hundred* (*500*) dollars, in the *gold coin* of the United States of America, on the *fourth* day of *April*, *1894*, with interest thereon at the rate of *one* per cent. per month, according to the terms and conditions of his certain promissory note of even date of this mortgage, in the words and figures following, to wit:

[Insert copy of note.]

(Signed.)

#### No. 229.—Mortgage—By Installments.

THIS INDENTURE, made the *twenty-eighth* day of *May*, in the year of our Lord, one thousand eight hundred and *ninety-four*, between *Henry Dunbar*, of the County of *Sonoma*, State of *California*, the party of the first part, and *Earl Bartlett*, of the City and County of *San Francisco*, State aforesaid, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of *five thousand* dollars, *gold coin* of the United States of America, to him in hand paid, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey and confirm unto the said party of the second part, his heirs, and assigns, all

[Description.]

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, and the rents, issues, and profits thereof.

To have and to hold, all and singular, the said premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

This conveyance is intended as a mortgage to secure the payment in *gold coin* of the United States, of the sum of *five thousand* dollars, in five annual installments, to wit: the sum of *one thousand* dollars on the *twenty-eighth* day of *May*, 1894, and the like sum on the *twenty-eighth* day of *May* in each of the four years next following, with interest on each installment from the date hereof, according to the conditions of a certain bond, dated this day, and executed by the said party of the first part to the said party of the second part; and these presents shall be void if such payments be made according to the tenor and effect thereof; but in case default be made in the payment of the said principal, or any installment thereof, or any installment of interest, as provided, then the whole sum of principal and interest shall be due at the option of the said party of the second part, or his assigns, and suit may be immediately brought, and a decree be had to sell the said premises, with all and every of the appurtenances, or any part thereof, in the manner prescribed by law, and out of the money arising from such sale, to retain the said principal and interest, although the time for payment of said principal sum may not have expired, together with the costs and charges of making such sale, and of suit for foreclosure, including counsel fees at the rate of *one* per cent. upon the amount which may be found to be due for principal and interest, by the said decree, and the overplus, if any there be, shall be paid by the party making such sale, on demand, to the said party of the first part, his heirs or assigns.

And it is hereby agreed, that it shall be lawful for the said party of the second part, his heirs, executors, administrators, or assigns, to pay and discharge at maturity all taxes or assessments, liens, or other incumbrances, now subsisting or hereafter to be laid or imposed upon said lot of land and premises, and which may be in effect a charge thereupon, and such payment shall be allowed, with interest thereon at the rate of *one* per cent. per month, and such payments and interest shall be considered as secured by these presents, and a charge upon said premises, and shall be repayable on demand, in the same kind of money or currency in



which the same may have been paid, and may be deducted from the proceeds of the sale above authorized.

In witness whereof, *etc.*

### No. 230.—Mortgage with Full Covenants.

THIS INDENTURE, made the *eighteenth* day of *May*, in the year of our Lord one thousand eight hundred and *ninety-four*, between *Henry Wilson*, of the *City and County of San Francisco*, State of *California*, the party of the first part, and *Samuel Davis*, of the *same place*, the party of the second part, witnesseth:

Whereas, the said party of the first part is justly indebted to the said party of the second part in the sum of *ten thousand* dollars, *gold coin* of the United States of America, secured to be paid by a certain promissory note, bearing even date with these presents, and which said note is in the words and figures following, to wit:

\$10,000.

*San Francisco, May 18, 1894.*

One year after date, without grace, for value received, I promise to pay *Samuel Davis*, or order, the sum of *ten thousand* dollars, in *gold coin* of the United States, of the standard issued from the mint of the United States during the year *1881*, with interest thereon from date until paid, at the rate of *nine-twelfths* of one per cent. per month; said interest payable in United States *gold coin* of the same standard, monthly, in advance; and I agree that in case of default in the payment of the said principal sum, or of any amount of monthly interest, as it shall fall due, that such amounts shall bear interest from the date of their respective maturity until paid, at the rate of *two* per cent. per month; and that if said monthly interest, or any part thereof, is not paid within *thirty* days after the same becomes due and payable, then the whole of said principal sum and interest shall forthwith become due and payable at the election of the holder of this note. This note is secured by a mortgage bearing even date herewith.

HENRY WILSON.

Now this indenture, witnesseth: That the said party of the first part, for the better securing the payment of the said sum of money secured to be paid by the said promissory note, with interest thereon, according to the true intent and meaning thereof, has granted, bargained, sold, conveyed, and confirmed, and by these presents does grant, bargain, sell, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain land situated in the *City and County of San Francisco*, and bounded and described as follows, to wit, commencing:

[Description.]

together with all and singular the tenements and appurtenances thereunto belonging, to have and to hold the said premises, with

the appurtenances, unto the said party of the second part, his heirs and assigns forever.

Provided, always, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors, and administrators shall well and truly pay or cause to be paid to the said party of the second part, his executors, administrators, or assigns the said sum of money secured to be paid by the said promissory note, and the interest thereon, at the time and in the manner mentioned in the said promissory note, according to the true intent and meaning thereof, then, and in that case, these presents and the estate hereby granted, shall determine and be void. And the said party of the first part, for himself and his heirs, executors, and administrators, does hereby covenant, promise, and agree to pay to the said party of the second part, his executors, administrators or assigns, the said sum of money and interest as mentioned in said promissory note, and secured to be paid as aforesaid. And if default shall be made in the payment of the said sum of money, or any part thereof, as provided in said note, or if the interest that may grow due thereon, or any part thereof, shall be behind and unpaid for the space of *thirty* days after the same should have been paid, according to the terms of said promissory note, then and from thenceforth it shall be optional with said party of the second part, his executors, administrators, and assigns, to consider the whole of said principal sum expressed in said note as immediately due and payable, although the time expressed in said note for the payment thereof shall not have arrived, and immediately to enter into and upon all and singular the premises hereby granted or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, his heirs, executors, administrators, or assigns, according to law; and out of the money arising from such sale to retain the principal and interest which shall then be due on the said promissory note, together with the costs and charges of foreclosure suit; and also the sum of *one hundred* dollars and a percentage, at the rate of *five* per cent. upon the amount of judgment recovered, or in case the said foreclosure suit is settled before judgment recovered, the amount due the plaintiff on said note, and this mortgage, as counsel fees, and also the amounts of all such payments of taxes, assessments, or incumbrances as may have been made by said party of the second part, his heirs, executors, administrators, or assigns, by reason of the permission hereinafter given, with the interest on the same hereinafter allowed, rendering the overplus of the purchase money (if any there shall be) unto the said party of the first part, his heirs, executors, administrators, or assigns. And the said party of the first part does hereby further covenant, promise, and agree, to and with the said party of the second part, to pay and discharge at maturity all such taxes or assessments, liens or incumbrances now subsisting or hereafter to be laid or imposed upon said premises,

or which may be in effect a prior charge thereupon, during the continuance hereof, and, in default thereof, the said party of the second part may pay and discharge the same, and may, at his option, keep fully insured against all risks by fire the buildings which are now or may be hereafter erected thereon at the expense of the said party of the first part, and the sums so paid shall be repayable in the same kind of money or currency in which the same may have been paid, and shall bear interest at the rate of one per cent. per month, and shall be considered as secured by these presents, and be a lien upon said premises, and shall be deducted from the proceeds of the sale thereof above mentioned, with interest as herein provided.

In witness whereof, *etc.*

In California covenant to pay certain percentage for attorney's fees is not absolute; but the Court has the power under Statutes of 1873-4, to regulate attorney's fee in such cases. In all places the right to recover attorney's fees, depends upon contract where there is no statutory regulation.

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## NOTICES.

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### No. 231.—Notice of Constable's Sale.

#### CONSTABLE'S SALE.

BY VIRTUE of an execution issued out of Justice *George W. Fox's* Court, of *Third Township*, County of *San Mateo*, State of *California*, dated the *twenty-eighth* day of *July*, 1894, in a certain action wherein *Martin Smith*, as plaintiff, recovered judgment against *John Doe*, defendant, for the sum of *seventy-five* dollars, United States gold coin, and costs of suit, taken at *seven* dollars and *seventy-five* cents, on the *twenty-fourth* day of *July*, 1894.

I have levied upon the following described property, to wit:

[Description.]

Notice is hereby given that on *Friday*, the *twenty-sixth* day of *August*, 1894, at *one* o'clock P. M. of that day, in front of the court-house in the County of *San Mateo*, I will sell all the right, title, and interest of said *John Doe*, the defendant, in and to the above described property, at public auction, for cash, *gold coin*, to the highest and best bidder, to satisfy said execution and all costs.

JOHN C. EDGAR, Constable.

### No. 232.—Notice of Sheriff's Sale on Foreclosure of Mortgage.

#### SHERIFF'S SALE.

UNDER AND BY VIRTUE of an order of sale and decree of foreclosure issued out of the *Superior* Court of the *City and County of San Francisco*, State of *California*, on the *twentieth* day of



*January, 1894*, in the above entitled action, wherein *James Mee*, the above named plaintiff, obtained a judgment and decree against *Michael H. Cosgriff*, Administrator of the estate of *Margaret O'Rourke*, deceased, and *Anne Cosgriff*, the wife of said *Michael H. Cosgriff*, defendants, on the *seventeenth* day of *July, 1894*, which said decree was, on the *tenth* day of *August, 1894*, recorded in Judgment Book *H* of said Court, at page *163*, I am commanded to sell—

All that certain lot, piece, or parcel of land situate in the *City and County of San Francisco*, State of *California*, and bounded and described as follows, to wit:

[Description.]

Notice is hereby given that on *Friday, the eighteenth* day of *February, 1894*, at *twelve o'clock, noon*, of that day, in front of the *City Hall*, in the *City and County of San Francisco*, I will, in obedience to said order of sale and decree of foreclosure, sell the above described property, or so much thereof as may be necessary to satisfy plaintiff's judgment, with interest thereon and costs, to the highest and best bidder for cash, in *gold coin* of the United States.

(Signed.)

NOTE.—See note to No. 140.

### No. 233.—Notice of Sheriff's Sale on Foreclosure of Lien.

#### SHERIFF'S SALE.

UNDER AND BY VIRTUE of an order of sale and decree of lien issued out of the *Superior Court* of the *City and County of San Francisco*, State of *California*, on the *twenty-eighth* day of *December, 1894*, in the above entitled action, wherein *John Boyle*, the above named plaintiff, obtained a judgment and decree against *Southern Pacific Railroad Company*, a corporation, et al., defendants, on the *twenty-third* day of *December, 1894*, which said decree was, on the *twenty-eighth* day of *December, 1894*, recorded in Judgment Book *H*, of said Court, at page *223*, I am commanded to sell—

All that certain lot, piece, or parcel of land situate, lying, and being in the *City and County of San Francisco*, State of *California*, bounded and described as follows, to wit:

[Description.]

Notice is hereby given that on *Friday, the nineteenth* day of *February, 1894*, at *twelve o'clock, noon*, of that day, in front of the *City Hall*, in the *City and County of San Francisco*, I will, in obedience to said order of sale and decree of lien, sell the above described property, or so much thereof as may be necessary to satisfy said plaintiff's judgment, with interest thereon

and costs, etc., to the highest and best bidder, for cash, in gold coin of the United States.

(Signed.)

*San Francisco, January 29, 1894.*

NOTE.—See note to No. 140.

### **No. 234.—Notice—Owner to Under Mechanics' Lien Law.**

*To John Smith, Contractor:*

You will please take notice that I am the owner of that lot on which stands the house *No. 2406 Mission street*, in the *City and County of San Francisco*. You will also take notice that *Henry Jones* is my tenant from month to month. You will also take notice that any work you do on said house or improvements, or any material you furnish will not be paid for by me; nor will I be responsible therefor; and you must look to said *Jones* personally for your compensation.

(Signed.)

NOTE.—This notice must be posted in some conspicuous place on the land, or upon the building or improvement. Cal. C. C. P., sec. 1192.

### **No. 235.—Notice to Quit by the Landlord.**

*To William Beales:*

Take notice that you are hereby required to quit, and deliver up to me the possession of the premises now held and occupied by you, being the premises known as [or situated]

[Description.]

at the expiration of the *month* [or *week*, or *year*, as may be,] of your *monthly* tenancy of said premises, commencing on the *fifth* day of *April*, 1894, and ending on the *fifth* day of *May*, 1894.

This is intended as a *month's* notice to quit, for the purpose of terminating your tenancy aforesaid.

GEORGE C. JENKINS.

*April 4, 1894.*

### **No. 236.—Notice of Quitting Premises by Tenant.**

*To George Jenkins, Landlord:*

Please take notice that I shall quit possession, and deliver up the premises now held and occupied by me, being the premises

[Description.]

at the end of the next *month* of my *monthly* tenancy of said premises, to wit, on the *fifth* day of *May*, 1894, as I intend to remove therefrom, and to terminate the said tenancy.

Yours, etc.,

WILLIAM BEALES.

*April 4, 1894.*

**No. 237.—Notice of Application to be Restored to Premises.**

[TITLE OF COURT AND CAUSE.]

YOU WILL PPEASE TAKE NOTICE that on *Monday, August 28, 1894*, at the hour of *ten A. M.*, or as soon thereafter as the matter can be heard, *S. S.*, the defendant in the above entitled action, will move *R. B. E.*, Esq., Justice of the Peace, at his office in the Town of *Mackeraville, Chancery Township, Siskiyou County, California*, to release said defendant from the forfeiture of his lease declared in said action, and that he be restored to his former estate.

Said motion will be made on the ground *that said forfeiture is a great hardship on said defendant, and will be based on the petition of said defendant, and the finding and judgment and other papers in said action.*

L. S. G.,

*Attorney for Petitioner and Defendant.*To *W. B.*, Esq., *Plaintiff.*

NOTE.—Cal. C. C. P., sec. 1179.

**No. 238.—Notice to Perform Covenants of Lease.**To *B. M.*, Esq.:

You are notified that in the lease under which you hold the premises *No. 2404 Mission Street, City and County of San Francisco*, as my tenant, you covenanted that you would *give the dwelling-house and outhouses and front fence on said premises two coats of good paint, the second as soon as the first is dry, every third year, commencing January 1, 1882*; that you have violated said lease by neglecting to paint the houses and fence on said premises at all. Now, this is to notify you that you are required to give said dwelling-house, outhouse, and front fence, *two good coats of paint*, as you covenanted to do as aforesaid, or deliver up possession of the same to the undersigned, or I shall institute legal proceedings against you to recover possession of said premises. Yours truly.

(Dated and signed.)

NOTE.—Cal. Code Civ. Proc., sec. 1161. The notice may be varied so as to embrace every possible covenant in a lease. In all cases it is good practice to copy from the lease into the notice the covenant which is violated.

**No. 239.—Notice to Pay Rent or Surrender Possession.**To *Jeremiah R. Hawkins*, *Tenant in Possession*:

You are hereby required to pay the rent of the premises hereinafter described, and which you now hold possession of, amounting to the sum of *forty* dollars, being the amount now due and owing to me by you for one month's rent, from the *twentieth* day of *September, 1894*, to the *twentieth* day of *October, 1894*, or deliver up possession of the same to *Frank Saxe*, my agent, who is hereby authorized to receive possession thereof, or the rent, due and unpaid, from you, or I shall institute legal proceedings



against you to recover possession of said premises, with treble rents.

Said premises are situated in the *City and County of San Francisco*, and described as follows:

*All that certain frame dwelling-house situate at the northeasterly corner of Clay and Webster streets; said premises having one hundred feet frontage on Webster street, and twenty-five feet on northerly line of said Clay street, and having the entrance on said Clay street, said premises being designated and known by the No. 2348 Clay street.*

Yours, etc.

(Dated.)

NOTE.—The above is in conformity with C. C. P. of Cal., sec. 1151.

### No. 240.—Notice to Change Terms of Lease.

To *James Rice, Esq.*:

You are hereby notified that at the expiration of the present month of your tenancy, which will be on the *fifteenth* day of *January, 1894*, the terms of your lease of the premises you occupy, under tenancy from month to month, situate in the *City and County of San Francisco*, and described as follows, to wit: *All that certain store on the northerly side of Washington street, between Sansome and Montgomery, and designated and known by the No. 536 Washington street*, will be changed as follows, to wit:

The monthly rent thereof will be *two hundred and fifty* dollars, *United States gold coin*, per month, payable *monthly*, in advance, on the *sixteenth* day of each and every month, you continue to hold possession thereof, after the expiration of the current month, instead of the sum of *fifty* dollars heretofore paid by you.

*JOHN SMITH, Landlord.*

(Dated.)

NOTE.—Sec. 327 of the Civil Code of California provides for changing terms of lease or tenancy from month to month arbitrarily; and the amount to which the rent may be raised is unlimited in those cases specially authorized by the statute.

### No. 241.—Notice Terminating Tenancy.

To *Thomas Hendricks, Tenant in possession*:

YOU ARE HEREBY NOTIFIED that on the *first* day of *September, 1894*, your lease or tenancy for the premises you hold possession of, situate in the *City and County of San Francisco, State of California*, and described as follows to wit:

[Description.]

Will terminate and end, and you are requested and required to deliver possession thereof to *Mr. Roe*, on said *first* day of *September, 1894*.

Yours, etc.

(Dated.)

**No. 242.—Notice of Annual Meeting.**

*Esmeralda* SILVER MINING COMPANY.—OFFICE, No 522 *Montgomery Street*.

The regular annual meeting of the stockholders of this company will be held at the office of the company, on *Monday, September 6, 1894*, at *twelve o'clock M.*

By order of the President.

(Dated.)

**No. 243.—Notice of Annual Meeting — Election of Directors.**

*Young Harmon* GOLD AND SILVER MINING COMPANY.—*Placerville, El Dorado County, California.*

The annual meeting of the stockholders of the above company will be held at the office, *528 Montgomery Street, San Francisco*, on *Tuesday, August 10, 1894*, at *five o'clock P. M.*, for the election of *five* directors for the ensuing year. Every stockholder is requested to be present in person or by proxy.

By order of the Board of Directors.

**No. 244.—Notice of Annual Meeting—Another Form.**

*Bella Union* GOLD AND SILVER MINING COMPANY.—*San Francisco District, Territory of Arizona.*

NOTICE IS HEREBY GIVEN that the *first* annual meeting of the stockholders of the above-named company will be held at the office of the company, No. *702 Washington Street*, in the *City of San Francisco*, on *Wednesday, the first day of August, 1894*, at *two o'clock P. M.*, for the election of *five* directors for the ensuing year, and transaction of such other business as may come before them.

By order of the Board of Directors.

(Dated.)

**No. 245.—Notice of Dissolution of Partnership.****DISSOLUTION OF COPARTNERSHIP.**

The firm heretofore existing under the name and style of *S. & A. Lazard*, doing business in the *City of Los Angeles*, is this day dissolved by mutual consent, Mr. *S. Lazard* having purchased the entire interest of *A. Lazard* in the concern.

(Dated.)

**No. 246.—Notice of Dissolution of Partnership—Another Form.****DISSOLUTION.**

*William H. Mead* and *Theodore Van Tassel* have this day dissolved copartnership, they having sold their entire stock and

business to *John Hoyt* and *Charles A. Fisher*, who will hereafter conduct and carry on said business.

(Dated.)

### No. 247.—Notice of Dissolution—Another Form.

#### DISSOLUTION OF COPARTNERSHIP.

The copartnership heretofore existing under the name and style of *Lull & Bradley*, in the *City of Sacramento*, is dissolved by mutal consent. All persons who are indebted to the undersigned are respectfully requested to come forward and make payment immediately.

(Signed.)

### No. 248.—Notice of Protest

UNITED STATES OF AMERICA, } ss.  
State of California. }

*San Francisco, June 2, 1894.*

SIR: Please take notice that a certain promissory note, dated *May 1, 1894*, for the sum of *five thousand* dollars, payable *thirty days after date*, drawn by *Henry Jones*, in favor of *Samuel Welsh*, and endorsed by you, was this day presented by me, a Notary Public, to said *Henry Jones*, the maker of the said note, and payment therefor demanded, which was refused, and the said promissory note having been dishonored, the same was this day protested by me for the nonpayment thereof, and the holder looks to you for the payment thereof, together with all costs, charges, interest, expenses, and damages already accrued, or that may hereafter accrue thereon by reason of the nonpayment of said promissory note.

(Signed.)

### No. 249.—Notice of Attachment—Sheriffs.

OFFICE OF THE SHERIFF, } ss.  
Of the City and County of *San Francisco*. }

*February 4, 1894.*

To *Mr. John Doe*:

You will please take notice, that all moneys, goods, credits, effects, debts due or owing, and all other personal property in your possession, or under your control, belonging to the defendant named in the writ, of which the annexed is a copy, or to either of them, are attached by virtue of said writ; and you are hereby notified not to pay over or transfer the same to any one but myself. Please furnish a statement.

(Signed.)



**No. 250.—Notice of Attachment of Stocks—Sheriff's.**

OFFICE OF THE SHERIFF  
Of the City and County of San Francisco. } ss.

*San Francisco, August 18, 1894.*

To Mr. John Doe, Secretary of the Smoky Valley Gold and Silver Mining Co.:

YOU WILL PLEASE TAKE NOTICE, that all stocks or shares, or interest in stocks or shares, of the *Smoky Valley Gold and Silver Mining Company*, in your possession, or under your control, belonging to the defendant named in the writ, of which the annexed is a copy, or to either of them, are attached by virtue of said writ; and you are hereby notified not to transfer or deliver over the same to any one but myself. Please furnish a statement.

(Signed.)

**No. 251.—Notice of Sheriff's Sale of Personal Property.**

SHERIFF'S SALE.

BY VIRTUE of an execution issued out of the *Superior Court* of the City and County of *San Francisco*, State of *California*, in the suit of *William A. Dana* against *Joseph C. Palmer*, duly attested the *eleventh* day of *April*, 1894, I have levied on *one sofa, six lounge chairs, one center-table, four sets of curtains, one sideboard, three carpets, one sofa and three chairs*.

Notice is hereby given that on *Thursday*, the *twenty-fourth* day of *May*, 1894, at *twelve o'clock m.*, at the dwelling-house, situated on the southeast corner of *Green and Stockton* streets, in the City and County of *San Francisco*, I will sell the above-described property to the highest bidder, for cash.

**No. 252.—Notice of Postponement.**

Notice is hereby given that the sale above referred to was this day by me postponed until *Saturday, June 2, 1894*, when it will take place as above stated.

CHARLES DOANE, Sheriff.

**No. 253.—Notice—Election of Assignee Sent by Mail.**

OFFICE OF THE SHERIFF  
Of the City and County of San Francisco. } ss.

*San Francisco, August 4, 1894.*

[TITLE OF COURT AND CAUSE.]

To John Brown:

YOU ARE HEREBY NOTIFIED to attend a meeting of the creditors of *Henry Smith*, to be held at my office in the *City Hall*, in said city and county, on *Monday*, the *first* day of *October*, 1894, at *two o'clock p.m.*, of said day, for the purpose of electing one or more

assignees of said *Henry Smith* in my place and stead. The amount of your demand set forth in the assignment to me is \$763.50.

J. J. McDADE, Sheriff.

### No. 254.—Notice to Creditors—Published.

OFFICE OF THE SHERIFF }  
Of the City and County of San Francisco. } ss.

September 10, 1894.

NOTICE IS HEREBY GIVEN, that a meeting of the creditors of *Henry Smith* will be held at my office on *Tuesday*, the *twenty-fifth* day of *September*, 1894, at 2 o'clock P.M., for the purpose of electing one or more assignees in my place and stead as assignees of said *Henry Smith*, for the benefit of his creditors.

J. J. McDADE, Sheriff.

## PATENTS.

### No. 255.—Assignment

#### OF THE ENTIRE INTEREST IN LETTERS PATENT.

In consideration of *five hundred* dollars, to me paid by *C. D.*, of, etc., I do hereby sell and assign to the said *C. D.* all my right, title, and interest in and to the letters patent of the United States, No. 41,806, for an improvement in "*Locomotive Head Lights*," granted to me on *July 30*, 1880, the same to be held and enjoyed by the said *C. D.* to the full end of the term for which said letters patent were granted, as fully and as entirely as the same would have been held and enjoyed by me if this assignment and sale had not been made.

Witness my hand, this *tenth* day of *March*, 1894.

A. B.

NOTE.—The assignment of a Patent Right, or an interest therein, must be in writing, but no precise form is prescribed. For the Sale and Assignment of a Copyright and remarks, see Form No. 21.

### No. 256.—Assignment

#### OF EXCLUSIVE TERRITORIAL GRANT BY AN ASSIGNEE.

In consideration of *one thousand* dollars, to me paid by *C. D.*, of etc., I do hereby grant and convey to the said *C. D.* the exclusive right to make, use, and vend within the State of *Iowa*, and in no other place or places, the improvement in "*Corn Planters*," for which letters patent of the United States, dated *August 16*, 1880, were granted to *E. F.*, and by said *E. F.* assigned me *December 3*, 1880, by an assignment duly recorded in *Liber H*, page 426, of the records of the Patent Office, the same to be held and enjoyed by

the said *C. D.* as fully and entirely as the same would have been held and enjoyed by me if this grant had not been made.

Witness my hand, this *nineteenth* day of *March, 1894.*

*A. B.*

### No. 257.—Assignment

OF AN UNDIVIDED INTEREST IN LETTERS PATENT AND EXTENSION THEREOF.

In consideration of *one thousand* dollars, to me paid by *C. D.*, of, *etc.*, I do hereby sell and assign to the said *C. D.* one undivided fourth part of all my right, title and interest in and to the letters patent of the United States, No. *10,485*, for an improvement in "*Cooking Stoves*," granted to me *May 16, 1880*, the same to be held and enjoyed by the said *C. D.* to the full end of the term for which said letters patent are granted, and for the term of any extension thereof, as fully and as entirely as the same would have been held and enjoyed by me if this assignment and sale had not been made.

Witness my hand, *etc.*

*A. B.*

### No. 258.—Assignment—License—Shop Right.

In consideration of *fifty* dollars, to me paid by the firm of *S. J. & Co.*, of *Boston*, I do hereby license and empower the said *S. J. & Co.* to manufacture at a *single foundry and machine shop* at (state place) and in no other place nor places, the improvement in "*Cotton Seed Planters*," for which letters-patent of the United States, No. *71,846*, were granted to me *November 13, 1880*, and to sell the machines so manufactured, throughout the United States, to the full end of the term for which said letters-patent were granted.

Witness my hand, this *twenty-second* day of *April, 1894.*

*A. B.*

### 259.—Sale or Transfer of a Trade-mark.

We, *A. B. and C. D.*, of *Boston*, partners under the firm name of *B. & D.*, in consideration of *five hundred* dollars, to us paid by *C. F.*, of the same place, do hereby sell, assign, and transfer to the said *C. F.* and his assigns, the exclusive right to use, in the manufacture and sale of *stoves*, a certain trade-mark for *stoves*, deposited by us in the United States Patent Office, and recorded therein *July 15, 1880*, the same to be held, enjoyed, and used by the said *C. F.* as fully and entirely as the same would have been held and enjoyed by us if this grant had not been made.

Witness our hands, this *twentieth* day of *July, 1894.*

*A. B.*

*C. D.*



**No. 260.—Assignment of a Patent—Long Form.**

WHEREAS, letters-patent, bearing date the *first day of March*, in the year of our Lord one thousand eight hundred and *ninety-four*, were granted and issued by the Government of the United States, under the seal thereof, to *A. B.*, of the town of *Grass Valley*, in the County of *Nevada*, State of *California*, for [*here state the nature of the invention in general terms, as in the patent*], a more particular and full description whereof is annexed to the said letters-patent in a schedule; by which letters-patent, the full and exclusive right and liberty of making and using the said invention, and of vending the same to others to be used, was granted to the said *A. B.*, his heirs, executors, administrators, and assigns for the term of *fourteen* years from the said date:

Now, know all men by these presents: That I, the said *A. B.*, for and in consideration of the sum of *one thousand* dollars, *gold coin* of the United States, to me in hand paid, the receipt whereof is hereby acknowledged, do by these presents grant, assign, and set over unto *C. D.*, of the town of *Downieville*, in the County of *Sierra*, State of *California*, his executors, administrators, and assigns forever, the said letters-patent, and all my right, title, and interest in and to the said invention so granted unto me:

To have and to hold the said letters-patent and invention, with all benefit, profit, and advantage thereof, unto the said *C. D.*, his executors, administrators, and assigns, in as full, ample, and beneficial a manner, to all intents and purposes, as I, the said *A. B.*, by virtue of the said letters-patent, may or might have or hold the same, if this assignment had not been made, for and during all the rest and residue of the said term of *fourteen* years.

In witness, *etc.*

NOTE.—Assignments of patents or patent rights should be recorded as required by Act of Congress, July 8, 1870, sec. 36.

Assignments of patents must be recorded in the U. S. Patent Office within three months after execution.

**No. 261.—Assignment**

OF AN UNDIVIDED FRACTIONAL INTEREST IN AN INVENTION BEFORE THE ISSUE OF LETTERS-PATENT.

In consideration of one dollar, to me paid by *C. D.*, of, *etc.*, I do hereby sell and assign to said *C. D.* an undivided half of all my right, title, and interest in and to a certain invention in *plows*, as fully set forth and described in the specification which I have prepared [*if the application has been already made, say "and filed"*] preparatory to obtaining letters-patent of the United States therefor. And I do hereby authorize and request the Commissioner of Patents to issue the said letters-patent jointly to myself and the said *C. D.*, our heirs and assigns.

Witness my hand this *sixteenth* day of *February*, 1894.

*A. B.*

**No. 262.—License—Not Exclusive—With Royalty.**

THIS AGREEMENT, made this *twelfth* day of *September*, 1894, between *A. B.*, party of the first part, and *C. D.*, party of the second part, witnesseth:

That, whereas, letters-patent of the United States, for an improvement in "*Horse Rakes*" were granted to the party of the first part, dated *October 4, 1884*, and whereas, the party of the second part is desirous of manufacturing *horse rakes* containing said patented improvement:

Now, therefore, the parties have agreed as follows:

I. The party of the first part hereby licenses and empowers the party of the second part to manufacture, subject to the conditions hereinafter named, at their factory [state place], and in no other place or places, to the end of the term for which said letters-patent were granted, *horse rakes* containing the patented improvements, and to sell the same within the United States.

II. The party of the second part agrees to make full and true returns to the party of the first part, under oath, upon the first *Mondays* of *July* and *January*, in *each* year, of all *horse rakes* containing the patented improvements manufactured by them.

III. The party of the second part agrees to pay to the party of the first part *five* dollars as a license fee upon every *horse rake* manufactured by said party of the second part containing the patented improvements; *provided*, that if the said fee be paid upon the days provided herein for semi-annual returns, or within *ten* days thereafter, a discount of *fifty* per cent. shall be made from said fee for prompt payment.

IV. Upon a failure of the party of the second part to make returns, or to make payment of license fees as herein provided, for *thirty* days after the days herein named, the party of the first part may terminate this license by serving a *written* notice upon the party of the second part; but the party of the second part shall not thereby be discharged from any liability to the party of the first part for any license fees due at the time of the service of said notice.

In witness whereof, the parties above named have hereunto set their hands the day and year first above written.

*A. B.*  
*C. D.*

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**POWER OF ATTORNEY.**

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**No. 263.—General Power of Attorney.**

KNOW ALL MEN BY THESE PRESENTS: That we, *John Doe* and *Richard Roe*, of the *City* and *County* of *San Francisco*, State of

*California*, have made, constituted, and appointed, and by these presents do make, constitute, and appoint *John Styles*, of said city and county, our true and lawful attorney for us and in our names, place, and stead, and for our use and benefit, to ask, demand, sue for, recover, collect, and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities, and demands whatsoever as are now or shall hereafter become due, owing, payable, or belonging to us, and have, use, and take all lawful ways and means in our names or otherwise for the recovery thereof, by attachments, arrests, distress, or otherwise, and to compromise and agree for the same, and acquittances or other sufficient discharges for the same, for us, and in our names, to make, seal, and deliver; to bargain, contract, agree for, purchase, receive, and take lands, tenements, hereditaments, and accept the seisin and possession of all lands, and all deeds and other assurances, in the law therefor, and to lease, let, demise, bargain, sell, remise, release, convey, mortgage and hypothecate lands, tenements, and hereditaments, upon such terms and conditions, and under such covenants, as he shall think fit. Also, to bargain and agree for, buy, sell, mortgage, hypothecate, and in any and every way and manner deal in and with goods, wares, and merchandise, choses in action, and other property in possession or in action, and to make, do, and transact all and every kind of business of what nature or kind soever, and also for us and in our names, and as our act and deed, to sign, seal, execute, deliver, and acknowledge such deeds, leases and assignment of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter-parties, bills of lading, bills, bonds, notes, receipts, evidences of debt, releases and satisfaction of mortgage, judgment and other debts, and such other instruments in writing of whatever kind and nature as may be necessary or proper in the premises.

Giving and granting unto our said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as we might or could do if personally present, *with full power of substitution or revocation*, hereby ratifying and confirming all that our said attorney, *or his substitute or substitutes*, shall lawfully do or cause to be done by virtue of these presents.

In witness whereof, *etc.*

JOHN DOE. [L. s.]  
RICHARD ROE. [L. s.]

#### No. 264.—Special Power of Attorney.

KNOW ALL MEN BY THESE PRESENTS: That we, *M. H. Firman* and *E. B. Drake*, of the *City and County of San Francisco*, State of *California*, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, *I. D. Creigle*, of said



city and county, our true and lawful attorney for us and in our name, place, and stead, to *sell and transfer our interest in the grist mill located on the Guadalupe River, Santa Clara County, State of California, with the lease of the land, to whom and on such terms as our said attorney may deem best, and by such instrument or means as may be agreed on between him and any other parties.*

Giving and granting unto our said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in about the premises, as fully to all intents and purposes as we might or could do if personally present, *with full power of substitution and revocation*, hereby ratifying and confirming all that our said attorney or his substitute shall lawfully do, or cause to be done, by virtue of these presents.

In witness whereof, *etc.*

#### **No. 265.—Special Power of Attorney—Another Form.**

KNOW ALL MEN BY THESE PRESENTS: That I, *F. A. Rogers*, of *Oro Fino*, County of *Siskiyou*, State of *California*, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, *A. H. Roseborough*, of *Yreka*, county aforesaid, my true and lawful attorney for me and in my name, place, and stead, *and for my use, to ask, demand, sue for, collect, and receive all such sums of money which are or shall be due, owing, payable, and belonging to me, or detained from me, in any manner whatsoever, by any person or persons whatsoever.*

Giving and granting unto my said attorney, full power and authority in and about the premises; and to use all due means, course, and process in the law for the full, effectual, and complete execution thereof, and in my name to make, execute, and deliver all and every instrument in writing under seal, or otherwise, and for the premises to appear and my person to represent before any governor, judge, officer, and minister of the law whatsoever, and in any court or courts of judicature, and on my behalf, to prosecute for debt, fraud, and any manner of claims I may have against any person or persons, and to answer, defend, and reply unto all actions, causes, matters, and things whatsoever relating to the premises. Also, to submit any matter in dispute respecting the premises to arbitration or reference. And generally to say, do, act, transact, determine, accomplish, and finish all matters and things whatsoever relating to the premises, as fully, amply, and effectually, to all intents and purposes, as I might or could do if personally present, *with full power of substitution or revocation*, hereby ratifying, confirming, and holding valid all that my said attorney, or his substitute or substitutes, shall lawfully do or cause to be done by virtue of these presents.

In witness whereof, *etc.*

**No. 266.—General Power of Attorney to Sell Mining Property.**

KNOW ALL MEN BY THESE PRESENTS: That I, *William Sharon*, of the *City and County of San Francisco*, State of *California*, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, *Horace Davis*, my true and lawful attorney for me and in my name, place, and stead, and for my use and benefit, to grant, bargain, sell, remise, release, convey, and quitclaim to whom and upon such terms as my said attorney may deem best, all of my right, title, and interest, estate, claim, and demand, both in law and in equity, as well in possession as in expectancy, of, in, or to that certain portion, claim, and mining right, title, or property on that certain vein or lode of rock containing precious metals of gold, silver, and other minerals, and situated in the *Big Cottonwood Mining District*, County of *Salt Lake*, and Territory of *Utah*, described as follows, to wit:

[Description.]

Giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do, if personally present, with full power of substitution or revocation, hereby ratifying and confirming all that my said attorney, his substitute or substitutes, shall lawfully do or cause to be done by virtue of these presents.

In witness whereof, *etc.*

**No. 267.—Power of Attorney to Sell Stocks—Another Form.**

KNOW ALL MEN BY THESE PRESENTS: That I, *Thomas O. Shaw*, of the *City and County of San Francisco*, State of *California*, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, *Richard K. Allen*, of said *city and county*, my true and lawful attorney, for me and in my name, place, and stead, to grant, bargain, sell, assign, transfer, and set over, for such sum or price, and on such terms as to him shall seem meet, the following number of shares of the capital stock of the following companies, standing in my name on the books of the said companies, to wit:

*Three (3) shares of the capital stock of the Gould & Curry Gold and Silver Mining Company; five (5) shares of the capital stock of the Ophir Gold and Silver Mining Company, and twenty (20) shares of the capital stock of the John Hancock Gold and Silver Mining Company.* And for me, and in my name, to sign and execute all necessary papers to that end. Giving and granting unto my said attorney, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to

be done in and about the premises, as fully, to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney, or his substitute or substitutes, shall lawfully do or cause to be done by virtue of these presents.

In witness whereof, *etc.*

#### **No. 268.—General Custom-House Power.**

KNOW ALL MEN BY THESE PRESENTS: That I, *John Doe*, do, by these presents, constitute and appoint *Robert Roe* my lawful attorney, to receive and enter at the Custom House of the District of *San Francisco*, any goods, wares, or merchandise imported by me, or which may hereafter arrive consigned to me, to sign my name, and to seal and deliver for me, and as my act and deed, any bond or bonds which may be required by the Collector of the said district for securing the duties on any such goods, wares, or merchandise. Also to sign my name to, seal, and deliver for me, and as my act and deed, any bond or bonds requisite for obtaining the debenture on any goods, wares, or merchandise when exported, and generally to transact all business at the said Custom-house in which I am or may hereafter be interested or concerned as fully as I could if personally present. And I do hereby declare that all bonds signed and executed by my said attorney shall be as obligatory on me as those signed by myself, and this power shall remain in full force until revoked by written notice given to the said Collector.

In witness, *etc.*

#### **No. 269.—Power of Attorney to Collect Debts.**

KNOW ALL MEN BY THESE PRESENTS, *etc.*, and for my use, to ask, demand, sue for, collect, and receive all such sums of money, debts, rents, dues, accounts, and other demands whatsoever, which are or shall be due, owing, payable, or belonging to me, or detained from me, in any manner whatsoever, by *E. F.*, of, *etc.*, his heirs, executors, and administrators, or any of them [or, by any person or persons residing or being in the State of *California*, giving and granting unto my said attorney, *etc.*

#### **No. 270.—Power of Attorney to Receive a Legacy— Another Form.**

KNOW ALL MEN BY THESE PRESENTS: That whereas *L. M.*, late of *Utah*, deceased, by his last will and testament, did give and bequeath unto me, *A. B.*, of, *etc.*, a legacy of *five hundred* dollars, to be paid unto me on the *fourth* day of *July*, *1894*, of which said will *G. H.* and *S. T.*, of, *etc.*, are joint executors: Now, therefore, I, the said *A. B.*, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, *C. D.*, of, *etc.*, my true and lawful attorney for me and in my name, and for my use



and benefit, to ask, demand, and receive of and from the said *G. H.* and *S. T.*, executors as aforesaid, the legacy given and bequeathed unto me by the said will of the said *L. M.*, as aforesaid; and upon receipt thereof by, or payment thereof to, my said attorney, to make, execute, and deliver a general release or discharge for the same; hereby ratifying, confirming, and allowing whatever my said attorney shall lawfully do in the premises.

In witness whereof, *etc.*

**No. 271.—Full Commercial Power of Attorney, with Authority to Sell, etc., Real Estate.**

KNOW ALL MEN BY THESE PRESENTS: That I, *A. B.*, of the County of *Santa Clara*, State of *California*, have made, constituted, and appointed, and by these presents do make, constitute, and appoint *C. D.*, of the County of *Alameda*, State of *California*, my true and lawful attorney, for me, and in my name, and on my behalf, to ask, demand, recover, and receive, all and any sum or sums of money, debts, dues, merchandise, or effects, due, payable, coming, or belonging, or which may at any time be due, payable or belonging to me, from any person or persons whatsoever; to sell all, or any part, of said goods, merchandise and effects, which may come to his possession or knowledge, on such credit, and for such prices as he may deem meet; to purchase any goods, merchandise, specie, currency, mining or other kinds of stocks, or other commodities, on my account, for such prices and to such amount as he may deem meet, and the same to sell again for my benefit and on my account, for any prices whatsoever, to ship or transport the same, or any part thereof, on my behalf and account, to any port or ports, place or places, whatsoever, in any vessel or vessels, and with and to any person or persons whatsoever, and there barter, exchange, and dispose of the same; to insure and cause insurance to be made, of any such goods, merchandise, specie, or other commodities, or of any part thereof, at such premiums, and for such risks as he may deem meet; to accept any bill or bills of exchange or orders, make and execute any note or notes of hand, bond or bonds, or other instruments or contracts, in my name, and on my account, to and for any amount which he may deem meet or expedient; to sell, barter, exchange, or dispose of any real estate of which I am now seized or possessed in fee simple, or for any less estate, to any person or persons, for any price, or in any manner whatsoever, and for these purposes to execute and acknowledge any deed or deeds, lease or leases, or other assurance or assurances, with general covenants of warranty against all persons, or any other covenants whatsoever, as he may deem expedient; to purchase any real estate on my account, in fee simple or otherwise, at any price or any exchange whatsoever, and for these purposes to receive, confirm, make, and execute, any contracts, deeds, conveyances, or other instruments whatsoever;

to settle and adjust all partnership accounts and demands, and all other accounts or demands now subsisting, or which may hereafter subsist between me and any person or persons whatsoever, and submit the same to and decide them by arbitration; to compound for any debts, dues, or demands owing, or which may hereafter be owing to me, and to take less than the whole, or otherwise to agree for the same, in such manner, and on such terms as he, in his discretion, may deem proper; and for all or any of these purposes, to make and execute any releases, compromises, compositions, agreements, or contracts, by deed or otherwise, in his opinion necessary and expedient in the premises; to pay and discharge all debts and demands due and payable, or which may hereafter become due and payable by me unto any person or persons whatsoever; to enter into any lands or other real estate to which I am, or may be entitled, and recover the possession thereof, and damages for any injury done thereto, and to distrain for rent due thereon, and also to commence and prosecute unto final judgment and execution, any suit or suits, action or actions, real, personal, or mixed, which he shall deem proper for the recovery, possession, or enjoyment of any matter or thing which is or which may hereafter be due, payable, owing, belonging, accruing, or appertaining to me, for or by reason of the premises, or any part thereof, and, in any such suits or actions, for me in person, or by such attorney or attorneys, or counsel, he may deem necessary or proper to retain or employ to appear and plead, before any courts or tribunals having jurisdiction thereof, and all stipulations, undertakings, recognizances, and other requisites in any suits or actions, and any question arising on the same, by arbitration or other compromise, and of all receipts and recoveries in the premises, due acquittances and discharges to execute and deliver, and generally to do and perform all matters and things, transact all business, make, execute, and acknowledge all contracts, orders, deeds, mortgages, satisfaction of mortgages, leases, and assignments of the same, and all other writing, assurances, and instruments of every kind, which may be requisite or proper to effectuate all or any of the premises, or any other matter or thing appertaining or belonging to me, with the same powers, and to all intents and purposes, with the same validity as I could, if personally present; [giving and granting unto my said attorney, *full power to substitute one or more attorneys under him*, my said attorney, in or concerning the premises, or any part thereof, and the same at his pleasure to revoke;] and hereby ratifying and confirming whatsoever my said attorney [or, his substitute or substitutes] shall and may do, by virtue hereof, in the premises.

The power and authority hereby given and conferred is confined and limited to the States of *California, Nevada, and Oregon*.

In witness whereof, *etc.*

NOTE.—The foregoing form is full and complete enough for almost every purpose; but if more power is desired to be conferred upon an agent, the foregoing forms will readily suggest how easily any addition can be made.



**No. 272.—Power of Attorney to Vote, etc.**

KNOW ALL MEN BY THESE PRESENTS: That I, *John Doe*, do hereby constitute and appoint *Richard Roe* my true and lawful attorney, for me, and in my name, place, and stead, to vote as my proxy at the *annual meeting* of the stockholders of the *Winter Gold and Silver Mining Company*, on Certificates Nos. *1 to 1,000*, both inclusive, for the election of trustees and transaction of other business, to be held on the *sixth day of August, 1894*, and according to the number of votes to which I would be entitled if personally present, with full power of substitution and revocation.

Witness, *etc.*

**No. 273.—Revocation of Power of Attorney.**

KNOW ALL MEN BY THESE PRESENTS: That whereas, I, *G. W. Tyler*, of the *City of Stockton*, County of *San Joaquin*, State of *California*, in and by my letter, warrant, or power of attorney, in writing, bearing date the *twenty-third day of March*, one thousand eight hundred and *ninety-one*, did make, constitute, and appoint *H. E. Hill*, of said city, my true and lawful attorney, for the purposes and with the powers therein set forth, as will more fully and at large appear by reference thereto, or to the record thereof, made on the said *twenty-third day of March, 1894*, in Book *3*, of Powers of Attorney, page *48*, in the office of the County Recorder of the said County of *San Joaquin*.

Now, therefore, I, the said *G. W. Tyler*, for divers good causes and considerations me hereunto moving, have revoked, countermanded, annulled, and made void, and by these presents do revoke, countermand, annul, and make void, the said letter, warrant, or power of attorney, and all power and authority thereby given, or intended to be given, to the said *H. E. Hill*.

In witness whereof, *etc.*

**No. 274.—Substitution of Attorney-in-Fact.**

KNOW ALL MEN BY THESE PRESENTS: That I, *D. J. Haslam*, of *Santa Cruz*, County of *Santa Cruz*, and State of *California*, by virtue of the power and authority to me given in and by the letter or power of attorney of *A. W. Blair*, of said county, bearing date the *second day of February*, one thousand eight hundred and *ninety-four*, and recorded in the office of the County Recorder of said County of *Santa Cruz*, State of *California*, on the *second day of February, 1894*, in Book *2*, of Powers of Attorney, page *100*, authorizing me to sell certain real estate in said *Santa Cruz* [or, a copy of which power of attorney is hereunto annexed; or, such other description as may be necessary to identify the original power of attorney], do substitute and appoint *Edmund Pew*, of said County of *Santa Cruz*, to do, perform, and execute every act and thing which I might or could do in, by, and under the same.



as well for me, as being the true and lawful attorney and substitute of the said *A. W. Blair*, hereby ratifying and confirming all that the said attorney and substitute hereby made and appointed shall do in the premises, by virtue hereof, and of the said letter or power of attorney.

In witness whereof, *etc.*

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## PROMISSORY NOTES.

### No. 275.—Promissory Note.

**\$756.** *San Francisco, August 21, 1894.*

*Sixty (60) days after date*, without grace, I promise to pay to *Richard Moses*, or order, the sum of *seven hundred and fifty-six (756)* dollars, payable only in *gold coin* of the United States, for value received, with interest thereon, in like *gold coin*, at the rate of *two per cent.* per month from date till paid.

### No. 276.—Promissory Note—Another Form.

**\$300.** *San Francisco, January 22, 1894.*

*Sixty (60) days after date*, without grace, I promise to pay to *James Phelan*, or order, the sum of *three hundred (300)* dollars, with interest thereon at the rate of *one per cent.* per month, from date until paid. Principal and interest payable only in United States *gold coin*; value received. And in the event of a suit to enforce the collection of this note, or any portion thereof, I further agree to pay the additional sum of *five per cent.* in like *gold coin*, upon the amount found due, as attorney fees in said suit.

### No. 277.—Promissory Note—Another Form.

**\$10,000.** *San Francisco, May 20, 1894.*

*One year after date*, without grace, for value received, I promise to pay to *Samuel Davis*, or order, the sum of *ten thousand* dollars in *gold coin* of the United States, of the standard issued from the mint of the United States during the year *1872*, with interest thereon from date until paid, at the rate of *nine-twelfths of one per cent.* per month; said interest payable in United States *gold coin* of the same standard, monthly, in advance; and I agree that in case of default in the payment of the said principal sum, or of any amount of monthly interest, as it shall fall due, that such amounts shall bear interest from the date of their respective maturity until paid, at the rate of *one per cent.* per month, and that if said monthly interest, or any part thereof, is not paid within *thirty days* after the same becomes due and payable, then the whole of said principal sum and interest shall forthwith become

due and payable at the election of the holder of this note. This note is secured by a mortgage bearing even date herewith.

### No. 278.—Promissory Note—Another Form.

\$1000.

*San Francisco, February 16, 1894.*

Thirty days after date, without grace, for value received, we jointly and severally agree and promise to pay to *J. C. Flood*, or order, *one thousand (1000)* dollars, with interest thereon at *one* per cent. per month, from date until paid, payable monthly, in advance. Principal and interest payable at *434 California street, San Francisco, in U. S. gold coin.*

Said interest, if not paid as it becomes due, to be added to the principal and become a part thereof, and to bear interest at the same rate. And in case default should be made in the payment of any interest, when due, then both principal and interest to become due and payable immediately after such default, at the option of the holder of this note.

### No. 279.—Promissory Note—Collateral Security.

\$1000.

*San Francisco, September 15, 1894.*

Sixty (60) days after date, without grace, I promise to pay, in gold coin of the United States of America, to the order of *Richard Roe*, at the banking-house of *Alfred Borel & Co.*, in this city, the sum of *one thousand (1000)* dollars, with interest thereon from date until paid, at the rate of *one and one-half* per cent. per month, the interest payable monthly in advance; and if not so paid, to be compounded and become a part of the principal, and bear thereafter, the same rate of interest, for value received.

*J. C. DUNCAN.*

Due *February 14, 1894.*

As collateral security for the payment of the above note and the interest to grow due thereon, I have deposited with said *Alfred Borel & Co.* the following personal property, to wit:

[Description.]

And should the said note or any part thereof, or the interest to grow due thereon, remain due and unpaid, after the same should have been paid, according to the tenor of said note, I hereby irrevocably authorize and empower *Alfred Borel & Co.*, or their heirs, executors, administrators, or assigns, to sell and dispose of the above mentioned personal property, or any part thereof, at public or private sale, without any previous notice to me of any such sale, and from the proceeds arising therefrom to pay the principal and interest, and all charges that shall be then due, and the costs of sale, and the balance, if any, to pay over to me or my representatives upon demand. In case

of deterioration of any of the above securities, or fall in the market value of the same, I hereby promise and agree to reduce the amount of debt, or to increase the security in proportion to such deterioration or decrease of value, in default of which this note is to be considered due under the above stipulation. On the payment of the above note and interest, according to the terms of the former, and all charges, this agreement is to be void, and the above named securities to be returned to me.

**No. 280.—Promissory Note—Collateral Security—Another Form.**

\$5000.

*San Francisco, Cal., September 2, 1894.*

For value received, I promise to pay, in gold coin of the United States of America, to *Richard Roe*, or order, *sixty (60) days* after date, without grace, the sum of *five thousand (5000)* dollars, with interest thereon at the rate of *one and one-half (1½)* per cent. per month, payable *monthly, in advance.*

**JOHN DOE.**

*Due November 1, 1894.*

I hereby transfer and deposit with said *Richard Roe*, as collateral security for the payment of the above promissory note, and the interest and expenses which may accrue thereon, the following personal property, of which I am the sole owner, the same being at my risk and expense, to wit:—

[Description.]

In case of non-payment of said promissory note, or the interest thereon, when due, I hereby appoint and constitute said *Richard Roe*, his heirs or assigns, my attorney irrevocable, with power of substitution, to sell at any time after said note or interest is due, with or without notice, at the option of said *Richard Roe*, the whole or any part of said security, either at public or private sale, at his discretion; and to deliver the same to the purchaser or purchasers thereof; and the proceeds to be applied to the payment of the said promissory note, interest due, and other expenses, together with *two* per cent. commissions on sales, and any surplus after payment of said note, interest, commissions, and expenses, to be subject to my order. In like manner I agree to pay on demand to said *Richard Roe*, his heirs or assigns, whatever deficit may result after applying the net proceeds of such sale to the payment of said principal and interest.

But in case of the payment of the said note and interest, according to the terms thereof, then this agreement to be void, and the above named security to be returned to me.

Witness, etc.



**No. 281.—Promissory Note—Another Form, with Collateral Security.**

\$3500.—No. 2824.

San Francisco, October 27, 1894.

Twenty days after date, without grace, for value received, in gold coin of the United States of America, we jointly and severally promise to pay to the order of *Boyd & Davis*, at their office in this city, the sum of *thirty-five hundred* dollars, with interest thereon from date until paid, at the rate of *one and one-half* per cent. per month, payable monthly; the said interest, if not so paid, to become part of the principal, and bear the same rate of interest as above specified. And for further value received, we hereby agree and bind ourselves to pay said principal and interest in gold coin of the United States of America, waiving any legal right which we now have, or may hereafter have, to pay the same in any other money or currency.

JOHN DOE.

JOHN SMITH.

We hereby transfer and deposit with *Boyd & Davis*, as collateral security for the payment of the above promissory note, and the interest and expenses which may accrue thereon, the following personal property, of which we are the sole owners, the same being at our risk and expense, to wit:

*Fifty shares Overman Silver Mining Company's stock; fifty shares Gould & Curry Silver Mining Company's stock; fifty shares Overman Silver Mining Company's stock; fifty shares Bob Ingersoll Mining Company's stock.*

Also, a further lien on any and all collaterals of any and all our notes in their favor, and such other and further collaterals as we may give them hereafter.

In case of non-payment of said promissory note, or the interest thereon, when due, we hereby appoint and constitute said *Boyd & Davis*, their heirs and assigns, our attorneys irrevocable, with power of substitution, to sell at any time after said note or interest is due, with or without notice, at the option of said *Boyd & Davis*, the whole or any part of said security, either at public or private sale, at their discretion, and deliver the same to the purchaser or purchasers thereof; and the proceeds to be applied to the payment of the above promissory note, interest due, expenses of such sale, all law expenses, counsel fees, fees for advice of counsel, or costs incurred or paid by the said *Boyd & Davis* in respect of said note or said security, together with one per cent. commission on sales; and any surplus after payment of said note, interest, commissions, and expenses, to be subject to our order, except that if the said *Boyd & Davis* shall, at the time of such sale, hold any other of our obligations, they may apply such surplus towards the payment of any of such obligations. In like manner, we agree to pay, on demand, to said

*Boyd & Davis*, their heirs or assigns, whatever deficit may result after applying the net proceeds of such sale to the payment of said principal and interest, costs, and expenses, as above.

In case of deterioration of any of the above securities, or fall in the market value of the same, we hereby promise and agree to reduce the amount of debt, or to increase the security in proportion to such deterioration, or decrease of value, in default of which this note is to be considered immediately due under the above stipulation.

On the payment of the above note and interest, according to the terms of the former, and all charges, this agreement to be void, and the above named securities to be returned to us, or our order, or assigns. Should any such sale be made, *Boyd & Davis*, or their assignees, directly, or in the name of any other person, shall have the right to purchase.

Witness our hands.

**No. 282.—Principal Note to Corporation Secured by Mortgage.**

\$25,000.

*San Francisco, January 16, 1894.*

On the *sixteenth* day of *January*, one thousand eight hundred and *ninety-four*, at or about *three o'clock P.M.* of that day, without grace, and for value received, in *gold coin* of the United States, I promise to pay to the *San Francisco Savings Union*, a corporation duly incorporated and doing business as such, or to its order, at its office, the principal sum of *twenty-five thousand (\$25,000)* dollars. And I further promise to pay interest on said amount, at the monthly rate of *two-thirds of one* per cent. to said *San Francisco Savings Union*, at its office, without grace, on the *sixteenth* day of *each and every month*, till payment of the principal, the first payment to be made the *sixteenth* day of *February, 1894*. And I further promise to pay both principal and interest in United States gold coin of the present standard, waiving any right which I may have, now or hereafter, to pay the same in any other currency. And further, I agree that in case of default in the payment of any of the amounts of principal or interest above stipulated, then such amounts shall bear interest from the date of their maturity until the day of payment, at the rate of *two* per cent. per month; and all amounts paid thereafter shall be applied, first, to the payment of any interest which may then be due and unpaid, and afterwards, the balance thereof to the repayment of the said principal sum. And I further agree that, at any time during such default, the entire unpaid balance of said principal sum shall become due and payable, if the holder of this note shall so elect, and shall bear interest at the rate of *two* per cent. per month from the date of maturity of the last paid amount of monthly interest until the whole principal sum and interest shall be paid. This note is secured by a mortgage of even date herewith.



**No. 283.—Note Given to a Loan Society—Secured by Mortgage.**

\$1000.

San Francisco, May 20, 1894.

One year after date, without grace, for value received, in gold coin of the United States, I promise to pay to *The California Savings and Loan Society*, or order, at its office, in the *City and County of San Francisco, California*, the sum of *one thousand* dollars, in gold coin of the United States, of the standard issued from the Mint of the United States during the year 1872, with interest thereon from date until paid, at the rate of *one* per cent. per month; said interest payable in United States gold coin of the same standard, monthly, in advance; and I agree that in case of default in the payment of the said principal sum, or of any amount of monthly interest, as it shall fall due, that such amounts shall bear interest from the date of their respective maturity until paid, at the rate of *two* per cent. per month, and that if said monthly interest, or any part thereof, is not paid within thirty days after the same becomes due and payable, then the whole of said principal sum and interest shall forthwith become due and payable, at the election of the holder of this note. This note is secured by a mortgage bearing even date herewith.

**No. 284.—Note—Installments Given to a Loan Society, Secured by Mortgage.**

\$7200.

San Francisco, May 20, 1894.

For value received, in gold coin of the United States, we promise to pay to *The California Savings and Loan Society*, or order, at its office, in the *City and County of San Francisco, State of California*, the sum of *seven thousand two hundred* dollars, in gold coin of the United States, of the standard issued from the Mint of the United States during the year 1872, with interest thereon from date until paid, at the rate of *nine-twelfths of one* per cent. per month, in manner following, that is to say: in *seventy-two* equal installments, of *one hundred* dollars each, in said gold coin; the first of said installments to be paid in said gold coin on the *twentieth* day of *June, 1894*, without grace, and a like installment in said gold coin on the *twentieth* day of each and every month thereafter, without grace, until the whole of said principal sum of *seven thousand two hundred* dollars, together with the interest that shall grow due upon the decreasing amounts thereof, as herein specified, shall have been fully paid. And we agree that in case of default of the payment of any of said installments, when, by the terms hereof the same shall fall due, that such installments shall bear interest from the date of their respective maturity until paid, at the rate of *two* per cent. per month. And that if any one of said installments is not paid within thirty days after the same becomes due and payable, the whole of the principal sum then



remaining unpaid, together with the interest that shall have accrued thereon, shall forthwith become due and payable, at the election of the holder of this note. This note is secured by a mortgage bearing even date herewith.

No. 285.—Protest of Note.

UNITED STATES OF AMERICA.

STATE OF California, }  
City and County of San Francisco. } ss.

ON the tenth day of November, in the year of our Lord one thousand eight hundred and ninety-four, at the request of *James Thompson*, the holder of the annexed bill of exchange, I, *George T. Knox*, a Notary Public, duly commissioned and sworn, dwelling in the said City and County of San Francisco, did present said bill of exchange at the office of *G. N. Foster & Co.*, in said City of San Francisco, where the same is made payable, and demanded payment thereof, and payment was refused, "having no funds."

Whereupon I, the said Notary Public, at the request aforesaid, did protest, and by these presents do publicly protest, as well against the drawee, acceptor, and indorser, as against all others whom it does or may concern, for exchange, re-exchange, and all costs, damages, charges, and interests already incurred, and to be hereafter incurred, for the non-payment of the said bill of exchange.

I do hereby certify, that on the tenth day of November, 1894, notice in writing of protest, demand, and non-payment of the above-mentioned bill of exchange was served upon *F. Collins*, the drawer and indorser, by handing same to him personally in said city, and upon *J. B. Marsh*, the acceptor thereof, by depositing the same in the post office in said city, addressed to him at *Austin, Reese River, State of Nevada*, his reputed place of business and residence.

Thus done and protested, in the said City and County of San Francisco, the days and years above written.

[SEAL.]

RECEIPTS.

No. 286.—Receipt.

San Francisco, February 1, 1894.

Received from *John Doe*, the sum of one hundred (100) dollars, salary in full for the month of January, 1894, at \$100 per month.

**No. 287.—Receipt.**

*San Francisco, March 1, 1894.*

Received of *R. D. Chandler*, one hundred (100) dollars, rent of *Water Lots Nos. 9 and 10, on Front street*, from *March 1, 1894*, to *April 1, 1894*.

**No. 288.—Receipt in Full for Less than Sum Due.**

\$1000.

*San Francisco, May 20, 1894.*

Received of *John Brown*, of the *City and County of San Francisco*, the sum of *one thousand* dollars, in full and complete satisfaction of a debt due me from *John Brown*, of the same place. Said sum of money now paid me by the said *John Brown* being less than the true sum due me from him as aforesaid. This instrument is intended as a receipt of a less sum than the whole amount due, and in full discharge of the whole amount due.

**No. 289.—Receipt in Full of All Demands.**

\$100.

*San Francisco, May 20, 1894.*

Received of *John Brown* one hundred dollars, in full of all demands against him.

**No. 290.—Receipt on Account.**

\$100.

*San Francisco, May 30, 1894.*

Received of *J. B.* \$100, to apply on account.

**No. 291.—Receipt for Money Paid for Another.**

\$100.

*San Francisco, May 10, 1894.*

Received of *J. L.* \$100, in full of all demands against *John L. Brown*.

**No. 292.—Receipt for a Special Purpose.**

Received *May 31, 1894*, from *L. S.*, \$100, to pay the account of *O. S.* against him.

**No. 293.—Receipt when Money is Paid by a Third Person.**

*Oakland, May 3, 1894.*

Received of *L. O.*, through *M. A.*, \$100, in full of all demands against *L. O.*, up to this date.

**No. 294.—Receipt of Interest to be Indorsed on a Bond.**

Received *May 3, 1894*, of *T. C.*, \$100, being the semi-annual interest this day due on the within bond.

**No. 295.—Receipt in Full for a Special Account.***San Jose, May 20, 1894.*

Received from *M. O.*, \$100, in full of all demands for rent to *May 3, 1894.*

**No. 296.—Receipt for Papers in a Case.***San Francisco, May 15, 1894.*

Received of *A. B.* the following papers: [*Description*].

**No. 297.—Receipt for Instrument for Record.***RECORDER'S OFFICE, Sacramento County, Cal.*

*Henry Haymond* to *Geo. C. Perkins*. Deed. Received the above entitled instrument for record, from *Geo. C. Perkins*, *February 3, 1894.* Returnable only to the party leaving the same, or order. \$7.50.

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**RELEASES.**

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**No. 298.—Release of All Demands.**

KNOW ALL MEN BY THESE PRESENTS: That I, *A. H. Denker*, of the County of *Los Angeles*, State of *California*, for and in consideration of the sum of *one hundred* dollars, *gold coin* of the United States of America, to me in hand paid by *Jerry Long*, of the County of *Tulare*, State aforesaid, have released and forever discharged, and by these presents do, for myself, my heirs, executors, and administrators, release and forever discharge the said *Jerry Long*, his heirs, executors, and administrators, of and from all, and all manner of actions and cause of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law or in equity, which against the said *Jerry Long* I ever had, or now have, or which I, or my heirs, executors, or administrators hereafter, can, shall, or may have, for, upon, or by reason of any matter, cause, or thing whatsoever, from the beginning of the world to the date of these presents.

In witness, *etc.*

**No. 299.—Release of All Demands—Another Form.**

KNOW ALL MEN BY THESE PRESENTS: That I, *John Brown*, of *Oakland*, *Alameda County, California*, for and in consideration of the sum of *one thousand* dollars, to me in hand paid by *Dennis Cameron*, of said city, have remised, released, and forever dis-



charged the said *Dennis Cameron* from all claims of every kind, nature, and character whatsoever against him from the beginning of the world to this day.

In witness, *etc.*

**No. 300.—Release Made in Pursuance of an Award.**

KNOW ALL MEN BY THESE PRESENTS: That I, *Niles Searles*, of, *etc.*, in the County of, *etc.*, have remised, released, and forever quitclaimed, and by these presents do remise, release, and forever quitclaim, unto *Wm. A. Wallace*, of, *etc.*, in the said county, his heirs, executors, and administrators, from all actions, cause, and causes of action, judgments, suits, controversies, trespasses, debts, duties, damages, accounts, reckonings, and demands whatsoever, for or by reason of any matter, cause, or thing whatsoever, from the beginning of the world to the *first* day of *April* last, save and except my right to redeem a certain farm now in mortgage to the said *Wm. A. Wallace*, at the time, under the terms, and in the manner prescribed in and by a certain award made the *third* day of *January*, in the year *1894*, by *H. Scammon*, of, *etc.*, on a reference to him of all disputes between me and the said *Wm. A. Wallace*.

In witness, *etc.*

**No. 301.—Release by Indenture.**

THIS INDENTURE, made this *first* day of *May*, between *A. L.*, of, *etc.*, of the one part, and *P. C.*, of, *etc.*, of the other, witnesseth, that on the date hereof the said *P. C.* and *A. L.* have each paid to the other the sum of *ten* dollars, and each of them has canceled and delivered up to the other certain covenants, bonds, notes of hand, and written contracts, upon which each of the parties claimed and pretended to have divers claims and demands on the other; the said claims and contracts so canceled and delivered up being supposed and intended to be all the claims and evidence of claim by each of the parties hereto on the other. And, in consideration thereof, each of them, the said *P. C.* and *A. L.* does hereby for himself and his legal representatives release and absolutely and forever discharge the other of and from all claims and demands, actions and causes of action, of every name and nature, so that neither of them shall have any claim on the other, directly or indirectly, on any contract or supposed liability or thing undertaken, done, or admitted to be done, from the beginning of the world to this day.

In witness, *etc.*

**No. 302.—Release to a Guardian.**

KNOW ALL MEN BY THESE PRESENTS, *etc.*, that *A. P.*, *etc.*, son and heir of *L. P.*, deceased, now over twenty-one years old, hath

remised, released, and forever quitclaimed, and by these presents doth remise, *etc.*, unto *A. B.*, of *S. F.*, his guardian, all and all manner of action, actions, suits, reckonings, accounts, debts, dues, and demands whatsoever, which he, the said *A. P.*, ever had, now hath, or which he, his executors or administrators, at any time hereafter can or may have, claim, or demand against the said *A. B.*, his executors or administrators, for, touching, and concerning the management and disposition of any of the lands, tenements, and hereditaments of the said *A. P.*, situate, *etc.*, or any part thereof, or for or by reason of any moneys, rents, or profits, by him received out of the same, or any payments made thereout, during the minority of the said *A. P.*, or by reason of any matter, cause, or thing whatsoever, relating thereto, from the beginning of the world to the day of the date hereof.

In witness, *etc.*

### No. 303.—Release of a Proviso or Condition.

KNOW ALL MEN BY THESE PRESENTS, *etc.*, that I, *O. L.*, of *O.*, for divers good considerations me hereunto moving, have remised, released, and quitclaimed, and by these presents, for me, my executors, administrators, and assigns, do, *etc.*, unto *L. S.*, of *S.*, his heirs, executors, administrators, and assigns, as well one proviso or condition, and all and every the sum and sums of money specified in the same proviso or condition, contained or comprised in one pair of indentures, of, *etc.*, bearing date, *etc.*, made between me, the said *L. S.*, of the one part, and the said *O. L.*, of the other part, and also all and all manner of actions and suits, cause and causes of action and suits, for or concerning the said proviso or condition.

In witness, *etc.*

### No. 304.—Release of a Legacy.

KNOW ALL MEN BY THESE PRESENTS: That whereas, *W. B.*, of *S. F.*, in the County of *S. F.*, and State of *C.*, by his last will and testament, in writing, bearing date the *first* day of *April*, 1894, did, among other legacies therein contained, give and bequeath unto me the sum or legacy of *ten* dollars, and of his said will and testament did make and constitute *O. T.* the sole executor. Now, therefore, I hereby acknowledge the receipt from the said executor, as aforesaid, of the said sum or legacy of *ten* dollars, so given and bequeathed to me as aforesaid, and do acquit, release, and discharge the said *O. T.* of and from all legacies, dues, and demands whatsoever, under, or by virtue of the said last will and testament, or against or out of the estate of the said *W. B.*

In witness, *etc.*

**No. 305.—Release of a Trust.**

WHEREAS, by indenture bearing date *June 1, 1894*, made between, *etc.* [here recite the deed], in which said indenture the said *O. P.* doth hereby declare that his name was only used in trust, for the benefit and behoof of *A. Z.*:

Now, know ye, that I, the said *O. P.*, in discharge of the trust reposed in me, at the request of the said *A. Z.*, have remised, released, and surrendered, assigned, and set over, and by these presents, for me, my executors, and administrators, do freely and absolutely remise, *etc.*, unto the said *A. Z.*, his executors, *etc.*, all the estate, right, title, interest, use, benefit, privilege, and demand whatsoever, which I, the said *O. P.*, have, or may have, or claim of or to the said premises, or of and in any sum of money or other matter or thing whatsoever, in the said indenture contained, mentioned, and expressed; so that neither I, the said *O. P.*, my executors, or administrators, or any of us, at any time hereafter, shall or will ask, claim, challenge, or demand, any interest, *etc.*, or other thing, in any manner whatsoever, by reason or means of the said indenture or any covenant therein contained, but thereof and therefrom, and from all actions, suits, and demands, which I, my executors, administrators, or assigns, may have concerning the same, shall be utterly excluded and forever debarred by these presents.

In witness, *etc.*

**No. 306.—Release from a Legatee upon his Coming of Age.**

KNOW ALL MEN BY THESE PRESENTS: That whereas, *A. S.*, of *S.*, made his last will and testament in writing, bearing date *third day of June, 1894*, and, among other legacies therein contained, did give and bequeath unto me, *T. S.*, of *S.*, his son, the annual sum of \$1000, to be paid to me quarterly, until I should attain the age of one-and-twenty years; and of his will constituted *O. S.* and *P. C.* joint executors, as in and by the said will may appear; and whereas, the said *O. S.* and *P. C.* did jointly accept of the said executorship, and trust, and I, the said *T. S.*, have attained my said age of twenty-one years; and whereas, the said *O. S.* and *P. C.*, have made up an account with me, the said *T. S.*, of all moneys received and paid by the said *S.* and *C.*, and all transactions in pursuance of the said executorship and trust, and have not only paid me the balance of such accounts, but also delivered unto me all the writing and papers belonging to the estate of the said deceased:

Now, know ye, that I, the said *T. S.*, being fully satisfied in the premises, have remised, released, and forever quitclaimed, and by these presents do remise, release, and forever quitclaim unto the said *O. S.* and *P. C.*, and each of them, their and each of their executors and administrators, all reckonings and accounts, sum and sums of money by them had and received in pursuance of



the said trust, or by means of their being executors to the said A. S., as aforesaid; and also of and from all other reckonings, accounts, and demands whatsoever, from the beginning of the world to the day of the date of these presents.

In witness, etc.

### No. 307.—Release of Land by a Judgment Creditor.

[TITLE OF COURT AND CAUSE.]

Judgment rendered the *third day of May, 1894*, in the Superior Court of the County of *Alameda*, against said *J. B.*, and in favor of said *J. S.*, for the sum of *one thousand* dollars damages, and *ten* dollars, costs of suit.

In consideration of *one thousand* dollars, to me in hand paid, the receipt whereof is acknowledged, I do hereby remise, release, and discharge the following described land and premises, to wit: [*description of the premises*], from all claim to or interest in the same, or any part thereof, which I may have under and by virtue of the above mentioned judgment, and from all lien or incumbrance that has attached to the same by reason of the recovery of the said judgment, as free and clear, in all respects, as though said judgment had not been rendered.

In witness, etc.

### No. 308.—Partial Release of Mortgage.

THIS INDENTURE, made the *nineteenth day of December*, in the year of our Lord one thousand eight hundred and *ninety-four*, between *Thomas Harper*, of the City of *New York*, of the first part, and *Washington L. Lyon*, of the City of *San Francisco*, of the second part:

Whereas, said party of the second part, by Indenture of Mortgage, bearing date the *fifteenth day of September*, one thousand eight hundred and *seventy-nine*, and recorded in the office of the County Recorder of the *City and County of San Francisco*, in *Liber No. 52*, of Mortgages, at page *129*, *September, 18, 1879*, did, for the consideration and for the purpose therein mentioned, mortgage the premises therein described.

And whereas, the said party of the second part has on the day of the date of these presents, paid to the said party of the first part the sum of *eighteen hundred* dollars, *gold coin*, of the United States, part of the money secured by the mortgage aforesaid, as therein specified.

Now, therefore, this indenture witnesseth: That the said *Thomas Harper*, party of the first part, in consideration of the premises and the said sum of *eighteen hundred* dollars, duly paid to the said party of the first part by the said party of the second part, at the time of the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, does by these presents grant, release, quitclaim, and set over unto the said party of the

second part, his heirs and assigns, all that part of the said mortgaged lands, bounded and described as follows, to wit:

[Description.]

Together with all and singular, the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining; and all the lien, right, title, and interest of the said party of the first part, of, in, and to the same, to the intent that the lands hereby conveyed and released shall forever be discharged from the said mortgage, and that the rest of the lands in the said mortgage specified, may remain to the said party of the first part, as heretofore.

To have and to hold the lands and premises hereby conveyed and released, to the said party of the second part, his heirs and assigns forever.

In witness whereof, *etc.*

### No. 309.—Release, or Satisfaction of Judgment.

[TITLE OF COURT AND CAUSE.]

For and in consideration of the sum of *eight hundred* dollars, *gold coin* of the United States, to me paid by *Richard Roe*, the *defendant* in the above-entitled action, full satisfaction is hereby acknowledged of a certain judgment rendered and entered in said *Superior Court* in the said action, on the *tenth* day of *September*, 1894, in favor of *John Doe*, the *plaintiff* in the said action, and against the said *defendant*, for the sum of *seven hundred and fifty* dollars, *gold coin* of the United States, with interest thereon from the *tenth* day of *September*, 1894, at the rate of *seven* per cent. per *annum* until paid, together with said *plaintiff's* costs and disbursements, amounting to the sum of *forty-five* dollars, and recorded in Book *D* of Judgments, at page 432. And I hereby authorize and direct the Clerk of said Court to enter satisfaction of record of said judgment in the said action.

(Dated.)

### No. 310.—Release, or Satisfaction of Mortgage.

KNOW ALL MEN BY THESE PRESENTS: That I, *Joseph M. Cavis*, of *Columbia, Tuolumne County*, State of *California*, do hereby certify and declare that a certain mortgage bearing date the *fourth* day of *March*, 1894, made and executed by *John Smith*, of said *county*, the party of the first part therein, to *John H. McKune*, of said *county*, the party of the second part therein, and assigned to me on the *third* day of *April*, 1894, by the said *John H. McKune*, and recorded in the office of the County Recorder of the said County of *Tuolumne*, in Book *5* of Mortgages, on pages *24* and *25*, on the *sixth* day of *March*, 1894, together with the debt thereby secured, is fully paid, satisfied, and discharged.

In witness whereof, *etc.*

(Signed and acknowledged.)

RETURNS.

No. 311.—Return of Sheriff—Attachment of Personal Property.

OFFICE OF THE SHERIFF }  
Of the *City and County of San Francisco.* } ss.

By virtue of the annexed writ, I duly attached all moneys, goods, credits, effects, debts due or owing, and all other personal property belonging to the defendants therein named, *or to either of them*, in the possession or under the control of *John Doe*, by serving upon the said *John Doe* personally, in the *City and County of San Francisco*, on the *sixteenth* day of *August, 1894*, at *eleven o'clock A.M.*, a copy of said writ, with a notice in writing, that such property was attached in pursuance of said writ, and not to pay over or transfer the said property to any one but myself. Statement demanded.

Answer:

[Here state answer of person served, as, "*and the said John Doe gave me a written acknowledgment that he was indebted to defendant herein in the sum of one thousand dollars.*"]

*WILLIAM McKIBBIN*, Sheriff.  
By *H. Burns*, Deputy Sheriff.

*San Francisco, August 18, 1894.*

No. 312.—Return of Sheriff—Attachment of Personal Property.

OFFICE OF THE SHERIFF }  
Of the *City and County of San Francisco.* } ss.

By virtue of the annexed writ, I duly attached all moneys, goods, credits, effects, debts due or owing, and all other personal property belonging to the defendants therein named, *or either of them*, in the possession or under the control of the parties herein-after named, by serving upon each of them respectively, personally, in the *City and County of San Francisco*, at the times set opposite their respective names, a copy of said writ, with a notice in writing that such property was attached, in pursuance of said writ, and not to pay over or transfer the said property to any one but myself.

Statements demanded. Answers as hereinafter mentioned.

NAMES.	TIME OF SERVICE.	ANSWERS.
<i>John Doe.</i>	<i>August 18, 1894.</i>	[Here state answer of <i>John Doe</i> , same as in Form No. 311.]

(Dated.)



**No. 313.—Return of Sheriff—Sale of Real Estate.**

OFFICE OF THE SHERIFF  
Of the *City and County of San Francisco.* } ss.

I, *William McKibbin*, Sheriff of the *City and County of San Francisco*, do hereby certify:

That, by virtue and in pursuance of the annexed *order of sale*, I advertised the property described in said order, and as follows, to wit:

[Description.]

to be sold by me in front of the *City Hall*, in the *City of San Francisco*, on the *first day of April, 1894*, at *twelve o'clock, noon*; that previous to said sale I caused due and legal notice thereof to be published once in each week for three weeks successively, immediately before said sale, in the *Daily Evening Bulletin*, a daily newspaper published in the *City and County of San Francisco*, and caused said notice to be posted in three of the most public places in the *City of San Francisco* for the same period preceding such sale, and that on the *first day of April, 1894*, the day on which said premises were so advertised to be sold, as aforesaid, I attended at the time and place fixed for said sale, and exposed the said premises for sale in *one parcel*, at public auction, according to law, to the highest bidder for cash, *United States gold coin*, when *John Doe*, being the highest bidder therefor, the said premises were struck off by me to the said *John Doe* for the sum of *one thousand dollars, gold coin* of the *United States*, which was the whole price bid, and which I acknowledge to have received; and that I delivered to said purchaser a certificate of said sale, and filed a duplicate thereof in the office of the *County Recorder* of the said city and county.

(Dated.)

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**SALE OF REAL ESTATE.**


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**No. 314.—Sale of Real Estate to State—Tax Certificate.**

ORIGINAL.

**SALE OF REAL ESTATE TO STATE—TAX CERTIFICATE.**

SOLD FOR THE NON-PAYMENT OF STATE AND COUNTY TAXES FOR THE  
FISCAL YEAR 1894-95.

STATE OF *California*, }  
County of *Sacramento.* } ss.

I, *Adolph Heilbron*, Tax Collector of the *County of Sacramento*, do hereby certify that by virtue of Chap. VII., Tit. IX., Part III., of the "*Political Code of the State of California*," I, *Adolph Heilbron*, the Tax Collector of the county aforesaid, heretofore and at

the-time hereinafter mentioned, did, on the *3d Monday in January, 1894*, deliver to the Auditor of said county a complete "Delinquent List" of all persons and property then owing taxes in the said county to the State of *California* and to the County of *Sacramento*, together with the costs and charges due thereon; which said delinquent list did include the property first herein-after described in this certificate. That the said property was assessed for the fiscal year ending *June 30, 1894*, for State and county taxes, at *one thousand* dollars, to *John Brown*. That the property assessed situated, lying, and being within the County of *Sacramento*, and described thus:

[Description.]

Was, on the *twentieth* day of *March, 1894*, in accordance with law, offered for sale to pay said taxes, at public auction, in front of the County Court House, in said county, to *the said best* bidder, who was willing to take the least quantity or smallest portion of the interest in said land, and pay the taxes, costs, and charges due thereon, which taxes, costs, and charges amounted to *thirty-one* dollars.

That on said day there was no purchaser in good faith for the same, or any part thereof. That thereafter, to wit, on the *twentieth* day of *April, 1894*, to which day I had postponed the sale, I again offered, in accordance with law, the said property for sale to pay said taxes, at public auction, in front of the County Court House in said county; and there being no purchaser in good faith for the same or any part of it, I did then and there strike off to the People of the State of *California*, as purchasers, the whole of said property for the amount of said taxes, costs, and charges, to wit, the sum of *thirty-one* dollars, whereby the People of the State of *California* became the purchasers of the last above described piece or parcel of land so sold as aforesaid for said taxes; and I do further certify that the said real estate was sold subject to redemption, pursuant to the statute in such cases made and provided, and that unless redeemed within *twelve months* from the date of this purchase, said purchasers will be entitled to a deed at the expiration of twelve months from the date of the sale.

Given under my hand, *etc.*

# No. 315.—Sale of Real Estate to an Individual—Tax Certificate.

ORIGINAL.

## SALE OF REAL ESTATE TO AN INDIVIDUAL—TAX CERTIFICATE.

SOLD FOR THE NON-PAYMENT OF STATE AND COUNTY TAXES FOR THE  
FISCAL YEAR 1893-94.

STATE OF *California*, }  
County of *Sacramento*. } ss.

I, *Adolph Heilbron*, Tax Collector of the County of *Sacramento*, do hereby certify that, by virtue of Chap. VII., Tit. IX., of Part III., of the "Political Code of the State of *California*," I, *Adolph Heilbron*, the Tax Collector of the county aforesaid, heretofore and at the time hereinafter mentioned, did on the *third Monday in January, 1894*, deliver to the Auditor of said county a complete "Delinquent List" of all persons and property then owing taxes in said county to the State of *California*, and to the County of *Sacramento*, together with the costs and charges due thereon, which said Delinquent List did include the property first hereinafter described in this certificate. That the said property was assessed for the fiscal year ending *June 30, 1894*, for State and county taxes, at \$1,000, to *John Williams*; that the property assessed situated, lying, and being within the County of *Sacramento*, and described thus:

[Description.]

was on the *twentieth* day of *March, 1894*, in accordance with law, offered for sale, to pay said taxes, at public auction in front of the County Court House, in said county; that at said auction *John Jones* was the bidder who was willing to take the least quantity or smallest portion of the interest in said land, and pay the taxes, costs, and charges due thereon, which taxes, costs, and charges, including *fifty (50)* cents for this certificate, amounting to *thirty-one* dollars; that the said least quantity or smallest portion of of the interest in said land lying and being within the County of *Sacramento*, as is hereinafter described, to wit:

[Description.]

was by me, *Adolph Heilbron*, Tax Collector as aforesaid, struck off to the said *John Jones*, who paid the full amount of said taxes, costs, and charges, and therefore became the purchaser of the last above described piece or parcel of land so sold as aforesaid for said taxes, and I do further certify that the said real estate was sold subject to redemption, pursuant to the statute in such cases made and provided, and that unless redeemed within *twelve* months from the date of this purchase, said pur



chaser will be entitled to a deed at the expiration of *twelve* months from date of the sale.

Given under my hand, this *twentieth* day of *March, 1894*.

ADOLPH HEILBRON,

Tax Collector of the County of Sacramento.

**No. 316.—Sale of Real Estate to an Individual—Tax Certificate—Duplicate.**

INDORSEMENT.

For value received, I hereby transfer, assign, convey, and set over unto *George Brown*, heirs and assigns, all my right, title, and interest in and to the within certificate of sale (and the duplicate hereof) of real estate sold for the non-payment of the State and county taxes, for the fiscal year *1894-95*, in the County of *Sacramento*, and numbered *twenty-three*.

To have and to hold the same unto the said *George Brown*, heirs and assigns forever, with full power and authority to demand and receive in his own name, or otherwise, a deed therefor, or otherwise use or dispose of at pleasure.

Witness my hand and seal, *etc.*

JOHN JONES. [L. s.]

STATE OF *California*,  
County of *Sacramento*. } ss.

On this *twenty-third* day of *March*, one thousand eight hundred and *ninety-four*, before me, *Geo. C. Perkins*, a Notary Public, in and for said county, residing therein, personally appeared the above named *John Jones*, personally known to me to be the individual whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

In testimony whereof, *etc.*

WILL.

**No. 317.—Will.**

IN THE NAME OF GOD, AMEN. I, *Paul Clifford*, of the *City and* county of *Sacramento*, State of *California*, of the age of *forty* years, and being of sound and disposing mind and memory, and not acting under duress, menace, fraud, or undue influence of any person whatever, do make, publish, and declare this my last Will and Testament, in manner following, that is to say:

First. *I direct that my body be decently buried with proper regard to my station and condition in life and the circumstances of my estate.*

Secondly. *I direct that my executors hereinafter named, as soon as they have sufficient funds in their hands, pay my funeral expenses and the expenses of my last sickness, and the allowance made to my family.*

Thirdly. *I give and bequeath to my wife, Jane Clifford, the sum of five thousand dollars; to my son, Charles Clifford, the sum of five thousand dollars; and to my daughter, Elizabeth Clifford, the sum of four thousand and five hundred dollars; which said several legacies or sums of money I direct and order to be paid to the said respective legatees, out of the proceeds of the sales of the personal property owned by me at the time of my death, after first paying and fully satisfying out of said proceeds all my just debts, and the expenses of administration, should the balance of said proceeds suffice for that purpose; and if not, then I direct and order said legacies, or sums of money, to be paid to the said respective legatees pro rata, in like proportion.*

Fourthly. *I give and devise to my said son, Charles Clifford, his heirs and assigns, all that certain lot, piece, or parcel of land, situate, lying, and being in the City and County of San Francisco, State of California, bounded and described as follows, to wit:*

[Description.]

*Together with all the hereditaments and appurtenances thereunto belonging, or in anywise appertaining: To have and to hold the premises above described, to the said Charles Clifford, his heirs and assigns forever.*

Fifthly. *I give and devise all the rest, residue, and remainder of any real estate, of every name and nature whatsoever, owned by me at the time of my death, to my said wife, Jane Clifford, and my said daughter, Elizabeth Clifford, to be divided equally between them, share and share alike.*

Sixthly. *I give and bequeath all the rest, residue, and remainder of my personal estate, goods, and chattels, of whatever kind or nature, owned by me at the time of my death, to my said wife, Jane Clifford.*

Lastly. *I hereby nominate and appoint Timothy Markham and Gordon Bennett, of said City and County of San Francisco, the executors of this, my last Will and Testament, and hereby revoke all former wills by me made.*

*In witness whereof, I have hereunto set my hand and seal, this ninth day of April, in the year of our Lord one thousand eight hundred and ninety-four.*

PAUL CLIFFORD. [L. S.]

The foregoing instrument, consisting of two pages, besides this, was, at the date hereof, by the said Paul Clifford, signed and sealed and published as, and declared to be, his last Will and Testament, in presence of us, who, at his request, and in his

presence, and in the presence of each other, have subscribed our names as witnesses thereto.

**MOSES KING,**  
Residing at 220 "J" St., Sacramento.

**HOMER WILLARD,**  
Residing at 520 "K" St., Sacramento.

**NOTE 1.**—In California the subject "Wills" is always new. It is everywhere a subject of interest. It goes without saying, that everybody knows that in the absence of a will property descends to the heirs at law. This note and the text treat of wills only and how to make them. How to proceed under them, is a question for Courts and practice in them. The forms in the text will be sufficient in all the States and places to which the book refers. Even the attestation clauses are sufficient in all places. Only one place,—Arizona,—besides California, permits olographic,—that is, unwitnessed,—wills, and there also witnesses must be over fourteen years of age.

In California all references are to the Civil Code.

THE WORD "WILL" includes codicil. Sec. 14.

A PERSON OF UNSOUND MIND may make a will before but not after his incapacity has been judicially determined. *Id.*, sec. 40.

FUTURE INTERESTS PASS BY WILL, and succession and transfer in the same manner as present interests. *Id.*, sec. 699.

PROPERTY OF EVERY DESCRIPTION may be acquired by will. *Id.*, sec. 1000.

A PERSON ACQUIRING PROPERTY BY WILL is liable to the extent of the land acquired upon any covenant or agreement in reference to the title of or to the property made by his deviser. *Id.*, sec. 1115.

AS TO GIFTS in view of death, they are not affected by a previous will, nor by a subsequent will, unless the will expresses an intention to revoke the gift. *Id.*, sec. 1152.

EVERY PERSON over the age of eighteen years, of sound mind, may, by will, dispose of all his estate, being chargeable in both cases with the payment of all his debts. *Id.*, sec. 1270.

A WILL procured by duress, menace, fraud, or undue influence is void; and a revocation, procured by the same means, is void. *Id.*, sec. 1272.

C. C. P., sec. 1312.

A MARRIED WOMAN may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner. Her will must be executed and proved in like manner as other wills. *Id.*, sec. 1273.

A TESTAMENTARY DISPOSITION may be made to any person capable by law of taking the property so disposed of, except corporations other than those formed for scientific, literary, or solely educational purposes. *Id.*, sec. 1275.

EVERY WILL, other than a nuncupative will, must be in writing; and every will, other than an olographic will and a nuncupative will, must be executed and attested as follows:

1. It must be subscribed at the end thereof by the testator himself, or some person in his presence and by his direction must subscribe his name thereto;
2. The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them, to have been made by him or by his authority;
3. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and,
4. There must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will, at the testator's request, and in his presence. *Id.*, sec. 1276.

AN OLOGRAPHIC WILL is one that is entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this State, and need not be witnessed.

A WITNESS to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this does not affect the validity of the will. *Id.*, sec. 1278.

A CONJOINT or mutual will is valid, but it may be revoked by any of the testators, in like manner with any other will. *Id.*, sec. 1270.

IF THE SUBSCRIBING WITNESSES to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved. *Id.*, sec. 1280.

ALL BENEFICIAL devises, legacies, and gifts made or given to a subscribing witness, are void, unless there are two other competent subscribing witnesses. *Id.*, sec. 1282.

IF A WITNESS, to whom any beneficial devise, legacy, or gift, void by the preceding section, is made, would have been entitled to any share of the estate of the testator, in case the will should not be established, he succeeds to so much of the share as would be distributed to him, not exceeding the devise or bequest made to him in the will, and



he may recover the same of the other devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them. *Id.*, sec. 1283.

NO WILL made out of this State is valid as a will in this State, unless executed according to the provisions of this chapter of the laws of California. C. C. P., sec. 1322. *Id.*, sec. 1285.

THE EXECUTION of a codicil, referring to a previous will, has the effect to republish the will, as modified by the codicil. *Id.*, sec. 1287.

A NUNCUPATIVE will is not required to be in writing, nor to be declared or attested with any formalities. *Id.*, sec. 1288.

TO MAKE A NUNCUPATIVE WILL valid, and to entitle it to be admitted to probate, the following requisites must be observed:

1. The estate bequeathed must not exceed in value the sum of one thousand dollars;

2. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator, at the time, to bear witness that such was his will, or to that effect;

3. The decedent must, at the time, have been in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear, or peril of death: or the decedent must have been, at the time, in expectation of immediate death from an injury received the same day. *Id.*, sec. 1289.

NO PROOF must be received of any nuncupative will, unless it is offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken. *Id.*, sec. 1290. C. C. P., sec. 1344.

NO PROBATE of any nuncupative will must be granted for fourteen days after the death of the testator, nor must any nuncupative will be at any time proved, unless the testamentary words, or the substance thereof, be first committed to writing, and process issued to call in the widow, or other persons interested, to contest the probate of such will, if they think proper. *Id.*, sec. 1291. C. C. P., sec. 1345.

NO WRITTEN WILL, nor any part thereof, can be revoked or altered otherwise than:

1. By a written will, or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator; or,

2. By being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction. Civil Code, sec. 1292.

WHEN A WILL IS CANCELED or destroyed by any other person than the testator, the direction of the testator and the fact of such injury or destruction, must be proved by two witnesses. *Id.*, sec. 1293.

THE REVOCATION of A WILL, executed in duplicate, may be made by revoking one of the duplicates. *Id.*, sec. 1295.

A PRIOR WILL is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will. *Id.*, sec. 1296.

IF, AFTER MAKING A WILL, the testator makes and executes a second will, the destruction, cancellation, or revocation of such second will does not revive the first will, unless it appears by the terms of such revocation that it was the intention to revive and give effect to the first will, or unless, after such destruction, cancellation, or revocation, the first will is duly republished. *Id.*, sec. 1297.

IF, AFTER HAVING MADE A WILL, the testator marries, and has issue of such marriage, born either in his lifetime or after his death, and the wife or issue survives him, the will is revoked, unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received. *Id.*, sec. 1298.

IF, AFTER MAKING A WILL, the testator marries, and the wife survives the testator, the will is revoked, unless provision has been made for her by marriage contract, or unless she is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation must be received. *Id.*, sec. 1299.

A WILL executed by an unmarried woman is revoked by her subsequent marriage, and is not revived by the death of her husband. *Id.*, sec. 1300.

AN AGREEMENT made by a testator, for the sale or transfer of property disposed of by a will previously made, does not revoke such disposal; but the property passes by the will, subject to the same remedies on the testator's agreement, for a specific performance or otherwise against the devisees or legatees, as might be had against the testator's successors, if the same had passed by succession. *Id.*, sec. 1301.

A CHANGE or incumbrance upon any estate, for the purpose of securing the payment of money or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed; but the devise and legacies therein contained must pass, subject to such change or incumbrance. *Id.*, sec. 1302.

A CONVEYANCE, settlement, or other act of a testator, by which his interest in a thing previously disposed of by his will is altered, but not wholly divested, is not

revocation; but the will passes the property which would otherwise devolve by succession.

IF THE INSTRUMENT by which an alteration is made in the testator's interest in a thing previously disposed of by his will expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency by reason of which they do not take effect. *Id.*, sec. 1304.

THE REVOCATION of a will revokes all its codicils. *Id.*, sec. 1305.

WHENEVER A TESTATOR has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate. *Id.*, sec. 1306.

WHEN ANY TESTATOR omits to provide in his will for any of his children, or for the issue of any deceased child, unless it appears that such omission was intentional, such child, or the issue of such child, must have the same share in the estate of the testator as if he had died intestate, and succeeds thereto as provided in the preceding section. *Id.*, sec. 1307.

WHEN ANY SHARE of the estate of a testator is assigned to a child born after the making of a will, or to a child, or the issue of a child, omitted in the will, as hereinbefore mentioned, the same must first be taken from the estate not disposed of by the will, if any; if that is not sufficient, so much as may be necessary must be taken from all the devisees or legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated; in such case, such specific devise, legacy, or provision may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted. *Id.*, sec. 1308.

IF SUCH children, or their descendants, so unprovided for, had an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they take nothing in virtue of the provisions of the three preceding sections. *Id.*, sec. 1309.

WHEN ANY estate is devised to any child, or other relation of the testator, and the devisee dies before the testator, leaving lineal descendants, such descendants take the estate so given by the will, in the same manner as the devisee would have done had he survived the testator. *Id.*, sec. 1310.

EVERY DEVISE of land in any will conveys all the estate of the deviser therein which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate. *Id.*, sec. 1311.

ANY ESTATE, right, or interest in lands acquired by the testator after the making of his will, passes thereby and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. Every will made in express terms devising, or in any other terms denoting the intent of the testator to devise all the real estate of such testator, passes all the real estate which such testator was entitled to devise at the time of his decease. *Id.*, sec. 1312.

\*NO ESTATE, real or personal, may be bequeathed or devised to any charitable or benevolent society, or corporation, or to any person or persons in trust for charitable uses, except the same be done by will duly executed at least thirty days before the decease of the testator; and if so made, at least thirty days prior to such death, such devise or legacy, and each of them, shall be valid; *provided*, that no such devises or bequests shall collectively exceed one-third of the estate of the testator leaving legal heirs, and in such case a *pro rata* reduction from such devises or bequests shall be made so as to reduce the aggregate thereof to one-third of such estate; and all dispositions of property made contrary hereto shall be void, and go to the residuary legatee or devisee, next of kin, or heirs, according to law. *Id.*, sec. 1313.

A CHILD conceived before, but not born until after, a testator's death, takes the same as if he was alive at his parent's death. *Id.*, sec. 1339.

A TESTAMENTARY disposition to "heirs," "relations," "nearest relations," "representatives," "legal representatives," or "personal representatives," or "family," "issue," "descendants," "nearest," or "next of kin," of any person, without other words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of such person. *Id.*, sec. 1334.

OF TWO MODES of interpreting a will, that is to be preferred which will prevent a total intestacy. Technical words in a will are to be taken in their technical sense, unless the context clearly indicates a contrary intention. Technical words are not necessary to give effect to any species of disposition by a will. The term "heirs," or other words of inheritance, are not requisite to devise a fee, and a devise of real property passes all of the estate of the testator, unless otherwise limited. *Id.*, secs. 1336-9.

A TESTAMENTARY disposition, when vested, cannot be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose; and if a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to him fails, unless an intention appears to substitute some other in his place. *Id.*, sec. 1343.



THE DEATH OF A DEVISEE or legatee of a limited interest before the testator's death does not defeat the interests of persons in remainder, who survive the testator. *Id.*, sec. 1344.

NOTE 2.—IN NEVADA every person over eighteen years of age, of sound mind, may make a will. Gen. Stats., sec. 3000.

A MARRIED woman may make a will the same as all other persons. In all cases, the estate of testator is chargeable with his debts. *Id.*, sec. 3001.

ALL WILLS, except nuncupative, must be in writing, and by the testator signed and sealed, or by some person in his presence, by his express direction, and attested by at least two competent witnesses subscribing in the presence of the testator. *Id.*, sec. 3002.

GIFTS TO SUBSCRIBING WITNESSES are void, unless there are two other subscribing witnesses. A creditor may be a witness. *Id.*, sec. 3003.

VERBAL WILLS (nuncupative) are valid if the entire estate is not more than \$1000, if there were two witnesses present when it was made, at the testator's last sickness, and if the testator bid some person to witness that such was his will, or words of like import. The will must be proved within three months after speaking the testamentary words. *Id.*, secs. 3004-5.

SUCH WILL cannot be probated before fourteen days after death, nor unless the testamentary words be first committed to writing by a Probate Judge and process issued to call in the widow, if any in the State, or others in the State, interested as heirs. *Id.*, sec. 3006.

WRITTEN WILLS cannot be revoked, unless by burning, tearing, canceling, or obliterating the same by the testator, with the intention of revoking, or by some person in his presence, or by his dictation, or by another will, or codicil. Revocation may be implied by law by subsequent changes in the condition of the testator, or in his circumstances. *Id.*, sec. 3007.

A WILL is revoked by making a second one inconsistent with the first. The revocation, or destruction, or cancellation of the second does not revive the first, unless the terms of the revocation appear, in terms, to revive the first, or unless after such destruction, etc., the first will shall be re-executed. *Id.*, sec. 3008.

IF THE TESTATOR MARRY after making a will, and the wife lives at his death, the will is thereby revoked, unless she is provided for in it, or mentioned in it in a manner to show an intention not to make provision for her; and no other evidence will be received to show that the testator did not intend to provide for his wife. *Id.*, sec. 3009.

AN UNMARRIED WOMAN'S WILL (that is, her testament, as distinguished from will,) is revoked at her marriage. Such will is not, nor will it ever be, revived by her husband's death. *Id.*, sec. 3010.

IF A PERSON agrees to convey land, and then devises the land, his heirs or devisees must perform his contract. *Id.*, sec. 3011. The same rule applies to incumbrances on land subsequently devised. *Id.*, sec. 3012.

IF A CHILD is born to a testator after his will is made, the child takes his part of his father's estate the same as if the will had not been executed, unless it is apparent, from the will, that it was the testator's intention not to provide for his child. *Id.*, sec. 3013.

THE SAME RULE applies if the testator omits to provide in his will for any child, or for the issue of a deceased child. If it appears from the will that such omission was intentional, then the omitted child will take nothing. If it does not appear that it was intentional, then the child takes the same share he would take if the will had not been executed. *Id.*, sec. 3014.

IF SUCH CHILDREN or their descendants, so unprovided for, shall have had their portion specifically advanced to them during the life of the parent, they take nothing, because they were not mentioned in the will. *Id.*, sec. 3016.

LINEAL DESCENDANTS of a relation, or child of a testator, take by descent the portion that would have gone to such child or relation. (Husband and wife are not relations.) *Id.*, sec. 3017.

A DEVISE OF LAND carries all the testator had, unless it clearly appears that he intended to devise a less estate. All land acquired after making a will passes under it. *Id.*, secs. 3018-19.

THE WORD "WILL" includes "codicils." *Id.*, sec. 3020.

NOTE 3.—In Idaho the same as in California down to the star (\*) on page 199. Rev. Stats., secs. 5725-5760. The six notes following the star (\*) on page 199 are common law, applicable everywhere.

NOTE 4.—In Montana the same substantially as in California, except—

A PERSON having an insane delusion cannot make a will. C. C., secs. 1720-1839.

A MARRIED WOMAN may make a will, provided she does not deprive her husband of more than one-third of all her estate. *Id.*, sec. 445.

A WILL made out of the State, if valid where made, is valid here. *Id.*, sec. 446.

A NUNCUPATIVE WILL is the same as in California, except the maker must, when he makes it, be in actual military service in the field, or doing duty on shipboard, and in both cases in actual contemplation, fear, or peril of death, or he must have been at the time in expectation of immediate death from an injury received the same day. *Id.* sec. 1735.



NOTE 5.—In Utah the same as in California, except—

CORPORATIONS formed for scientific, literary, religious, charitable, benevolent, and solely educational may take by will. Comp. Laws, sec. 2650.

NUNCUPATIVE WILLS are invalid, unless the decedent must have been when it was made in expectation of immediate death from an injury, or casualty happening or occurring within twenty-four hours previous to the making. *Id.*, sec. 2662.

In Utah there is no prohibition against bequests to charitable, etc., institutions, consequently they may be made without restriction.

NOTE 6.—In Wyoming a married woman may make a will (Rev. Stats., sec. 1561); and so may all other persons of full age and sound mind. *Id.*, sec. 2234.

EXECUTORS must be residents of the State. If not residents, they must designate a competent resident to act for them. If the executor is sole legatee, he may give a bond to the State, in an amount to be fixed by the Probate Judge, that he will pay all the debts. When the bond is given no administration is necessary, and all the estate of the testator immediately vests in the executor; and the debts become personal charges against the executor. If the executor fails to qualify, the Court appoints an executor to close the estate. *Id.*, secs. 2239, 2240.

EVERY DEVISE OF LAND conveys all the testator owned and all he acquired after the will was made. All wills without exception must be in writing and witnessed by two witnesses and signed by the testator, or by some person for him, at his request, in his presence. The witnesses need not sign in the presence of each other, but they undoubtedly should. If a witness would be entitled to any portion of the estate, if the will had not been made, he will be entitled to that part; but for anything more, there must be two other witnesses. *Id.*, secs. 2236-2237.

THEY MAY BE REVOKED the same as in California; and they are liable to be revoked by implication from subsequent changes in the condition of the testator. *Id.*, sec. 2238.

THE FOREGOING is, in substance, the statutory law of Wyoming upon this subject. Her Courts are guided when dealing with them by the common law. It is thought that the provision vesting the entire estate in the sole legatee is far in advance of the Code States. The subsequent changes referred to in the statute, which may or may not revoke a will, are marriage, children born, etc.

NOTE 7.—In Washington a married woman may make a will (Hill's Laws, sec. 2400); and so may every other sane person of the age of majority, *Id.*, sec. 1458. The age of majority is: Males twenty-one, and females eighteen years. *Id.*, C. P., sec. 1134.

EVERY WILL must be in writing the same as elsewhere, and signed by the testator, or by some person under his direction, in his presence, and subscribed by two or more competent witnesses, subscribing their names in the presence of the testator. *Id.*, Gen. Stats., sec. 1459.

WILLS are subscribed and revoked and affected by marriage and the birth of children the same as in California. *Id.*, secs. 1460-1462, 1465-1467.

NUNCUPATIVE WILLS are good without any form whatever when the estate bequeathed is not over two hundred dollars. There appears to be no limit to the amount that may be bequeathed by will not in writing, *provided* it be witnessed by two witnesses, present at the making, and it be proven that the testator at the time the testamentary words were pronounced bid some person to bear witness that such was his will, or to that effect; and it must also appear that the will was made at the testator's last sickness, and at his dwelling-house, where he had resided for two days previous. If he was taken sick from home and died before returning, then the will is good if made away from his residence. A sailor at sea or a soldier in the military service may dispose of wages or other personal property by unwritten wills. The provisions as to the time of their proof are the same as in California. *Id.*, secs. 1469-1470.

THE PROVISIONS respecting beneficial devises are the same as in California. *Id.*, secs. 1471-1473.

THE SAME RULE as to after-acquired property applies. *Id.*, sec. 1475.

IF PROPERTY SPECIFICALLY DEVISED be taken on execution for a debt of the deceased then the other devisees contribute to the extent of the value of the property lost to the devisee. *Id.*, secs. 1475-1476.

NOTE 8.—In Oregon every person over twenty-one years of age, of sound mind, may devise all his estate, *real and personal*, saving to the widow her dower, and every person over eighteen years of age of sound mind may so dispose of his goods and chattels, and a married woman may so dispose of all her estate subject to her husband's rights as tenant by "the courtesy." Hill's Laws, secs. 3066-69.

A TENANT by the courtesy is the husband's right to hold all the wife's property for his life after her death. *Id.*, sec. 2983.

THE WIDOW'S RIGHT of dower is the right to the use of one-third of all her husband's lands, for life. *Id.*, sec. 2954.

THE WILL is executed the same as in California. *Id.*, secs. 3069-70.

AS TO THE EFFECT OF MARRIAGE and the birth of children on wills, see California. *Id.*, secs. 3071-75.

AS TO CHARGES and incumbrances on land devised, see California. *Id.*, secs. 3073-74.

AS TO ADVANCES to children during life, and the death of devisees, and the effect of second wills upon prior ones, see California. *Id.*, secs. 3076-73.

A MARINER at sea, or soldier in military service, may dispose of his wages or other personal property by verbal or nuncupative will. The will must be offered for probate within six months and the testamentary words reduced to writing within thirty days after spoken. It cannot be probated within fourteen days after the death of the maker and citations to heirs must be issued the same as in California. *Id.*, secs. 3079-81.

REAL ESTATE must be executed according to the laws of the State, and personal property may be devised according to the laws of the State, or according to the laws of the State in which the will was executed. *Id.*, secs. 3082-83.

A WITNESS to a will cannot take under it any more than he would have been entitled to as heir or successor if the will had not been made; but if there are sufficient other witnesses, then he may take the same as if he had not witnessed it. *Id.*, secs. 3085, 3089-92.

IF A WILL give property of any description, and if the devisee is deprived of it by process of law for the payment of debts, the other devisees must make good his loss to him. *Id.*, sec. 3095.

NOTE 9.—In Colorado every male aged twenty-one years of age, of sound mind, and every female aged eighteen and not married, may, by will, dispose of all property, and every person seventeen years of age, of sound mind, may dispose of personal property. A married woman may by will dispose of not more than one-half of her estate away from her husband. *Mills' Stats.*, vol. 2, secs. 4652-3011.

WILLS DEVISING REALTY are executed and witnessed the same as in California. *Id.*, sec. 2453.

A NUNCUPATIVE WILL must be declared in the last sickness of the deceased, in the presence of two witnesses of good character, called by the testator to witness the same, and by them reduced to writing within a reasonable time after the speaking thereof, is good in law for the devising of personal estate. *Id.*, sec. 4654. When such will is offered for probate it must appear by two creditable, disinterested witnesses, who were present when the words were spoken, and it must appear that they believed him to be of sound mind and memory, and that the testator did, at the same time, desire the persons present, or some of them, to bear witness that such was his will, or words to that effect, and that such will was made in the last sickness of the testator; and it must be also proved by two other disinterested witnesses, that the will was committed to writing within a reasonable time after the death of the maker. *Id.*, sec. 4671.

NOTE 10.—In Arizona every person twenty-one years old, or who may be, or has been, married, of sound mind, may make a will. Such will may devise property of any nature. *Rev. Stats.*, secs. 3232-33.

IF THE WILL is entirely written by the testator, it must be witnessed by two or more witnesses, above the age of fourteen years, subscribing their names in the testator's presence. *Id.*, secs. 3234-35.

WILLS are altered and revoked the same as in California. *Id.*, sec. 3236.

NUNCUPATIVE WILLS may dispose of not over fifty dollars; must be made in the last sickness, and must be proved by three witnesses. They must be proved within fourteen days after the death of the maker. After six months it cannot be established, unless it was reduced to writing within six days after the testamentary words were spoken; but a soldier in active military service, or a mariner or seaman, being at sea, may dispose of his chattels without any restrictions or limitations; therefore, nuncupative wills seem applicable only to a man ashore, who is not a soldier in actual service. *Id.*, secs. 3238-3241.

THE CALIFORNIA REGULATIONS respecting children are applicable to Arizona. *Id.*, secs. 3242-3246, and so are the provisions relating to gifts to subscribing witnesses. *Id.*, secs. 3247-3248.

### No. 318.—Will—Codicil.

WHEREAS, I, *John Smith*, of City of *Oakland*, County of *Alameda*, State of *California*, did, on the first day of *January*, eighteen hundred and *ninety-four*, make my last Will and Testament of that date, do hereby declare this to be a codicil to the same.

I hereby ratify and confirm said Will in every respect, save so far as any part of it is inconsistent with this codicil.

To my beloved wife, I give the further sum of *two thousand* dollars, to be paid to her by my executors within three months after my decease.

To the *American Bible Society*, instituted in the City of *New York* in the year eighteen hundred and sixteen, the sum of *three hundred* dollars.



In witness whereof, I have hereunto set my hand and seal, this first day of *May*, eighteen hundred and *ninety-four*.

JOHN SMITH.

### No. 319.—Will—Nuncupative.

In the matter of the Nuncupative Will of *John Doe*, deceased.

On the first day of *January*, 1894, *John Doe*, being at that time doing duty on the ship *Mary Perkins*, at sea, and in peril of death, and in fear of death [or in actual military service in the field; or in expectation of immediate death from an injury received on the said day,] in the presence of the subscribers, did declare his last will and wishes concerning the disposition of his property, in the following words, viz:

"I desire that *one thousand dollars*, now in *The California Savings and Loan Society* bank, at *San Francisco, California*, be given to my sister, *Mary Doe*, which I will and devise to her."

At the time the said *John Doe* stated the foregoing as his will, he was of sound mind and memory, and not under any restraint, and he at that time desired us to bear witness that such was his wish, desire, and will.

Reduced to writing by us, this *fifth day of January*, 1894.

RICHARD ROE.

JOHN SMITH.

NOTE.—A Nuncupative Will is a spoken will, and must be made under one or more of the circumstances described in the form. Not over one thousand dollars can be given away by such will. There must also be two witnesses. The words spoken must be reduced to writing within thirty days, and offered for probate within six months, and not before fourteen days after the death of the maker. Cal. C. C., secs. 1289, 1290. See note to No. 317.

### No. 320.—Will — "Olographic," (or sometimes "Holographic").

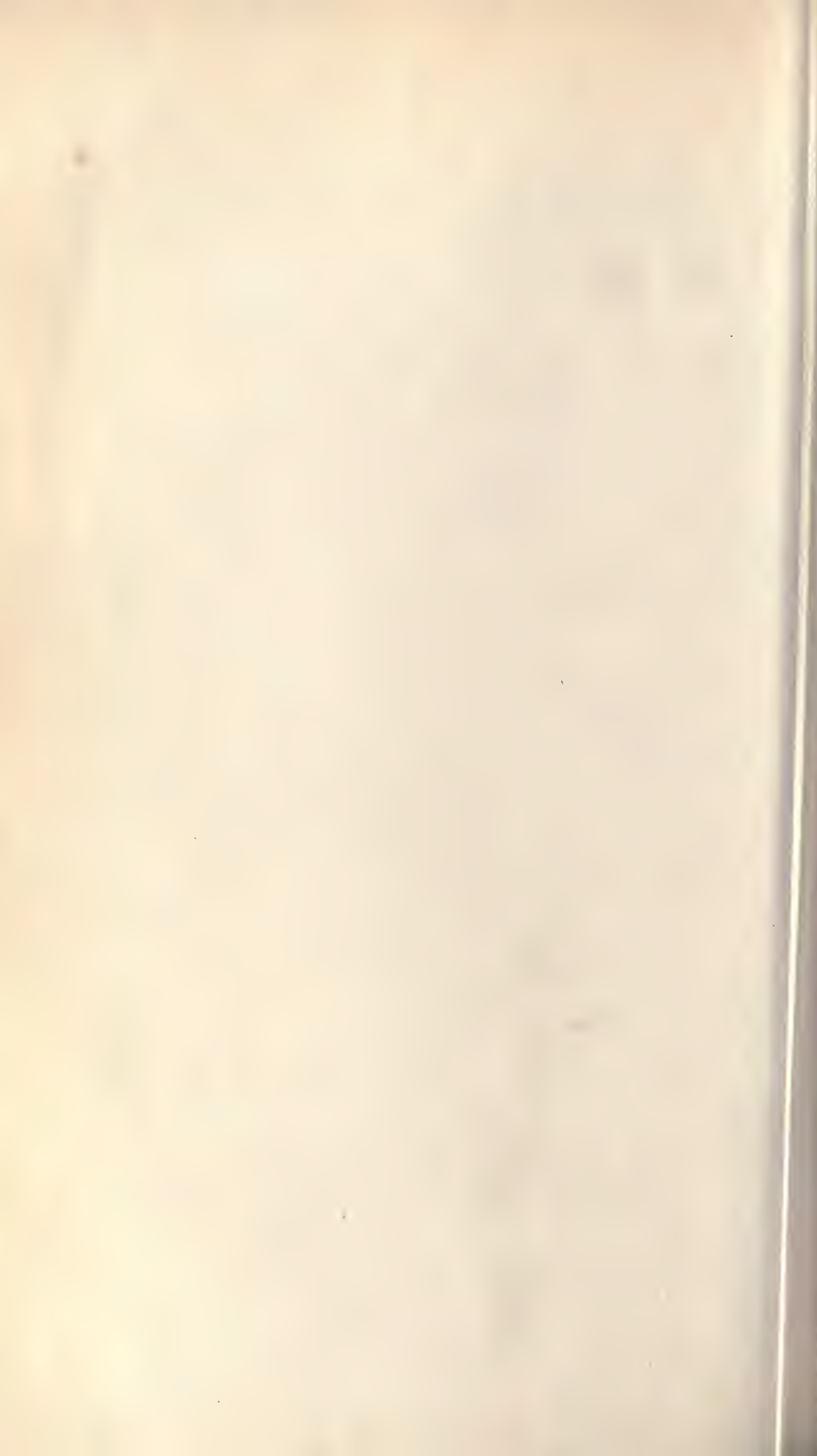
*San Francisco, June 3, 1894.*

I, *John Smith*, hereby make my last Will. I give all the property of which I die possessed to my wife, *Mary Euphonia Smith*. I appoint my wife executrix of this Will, without bonds. I give her power to sell all or any of my estate, without an order of Court; and I revoke all the Wills by me heretofore made. I declare that this Will is entirely written, dated, and signed by my hand.

JOHN SMITH. [L. s.]

NOTE.—An olographic will is one that is entirely written, dated, and signed by the testator himself. It is subject to no other form, and may be made in or out of this State, and need not be witnessed. Any amount of property may be disposed of by it. Cal. C. C., sec. 1277. See note to No. 317.

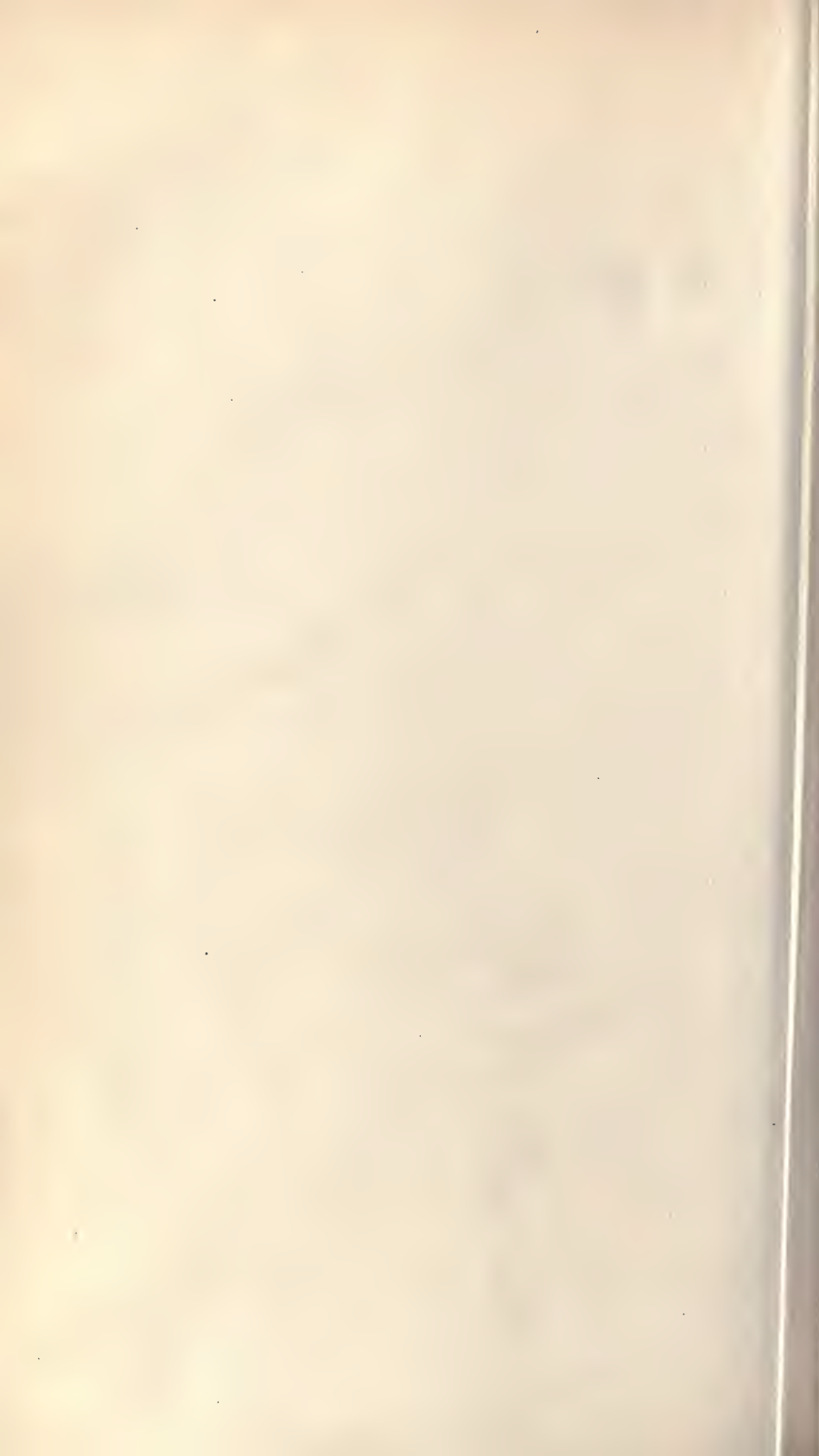




## PART II.—COURTS.

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- I. JUSTICES' COURTS.
- II. SUPERIOR COURTS—INSOLVENCY.
- III. SUPERIOR COURTS—GENERAL.
- IV. SUPERIOR COURTS—CRIMINAL.
- V. SUPERIOR COURTS—PROBATE.





## PART II.—COURTS.

### I. JUSTICES' COURTS.\*

#### No. 321.—Affidavit for Order of Arrest.

IN THE JUSTICES' COURT of the *Sixth Township*, in and for the  
County of *San Mateo*, State of *California*.

*John Thomas*,  
Plaintiff,  
v.  
*John Smith*,  
Defendant.

*John Thomas*, the plaintiff in the above-entitled action, being duly sworn, says:

That the said action is for the recovery of money on a cause of action arising upon an express contract, and is pending in said Court; that there is now due thereon from defendant to plaintiff the sum of *one hundred and seventy-five* dollars, and that the defendant in said action is about to depart from this State with the intent to defraud his creditors.

That the facts on which the application for an order of arrest of said defendant is founded are as follows, to wit:

*Said defendant has converted all his property into cash, at much less than its real value, and has, under the assumed name of "Brown John," secured a passage on the steamer "Moses Taylor," advertised to sail this day for Panama, and is now on said steamer with intent to leave this State. Said defendant, although he has met this affiant daily within the past week, and was yesterday requested to pay the plaintiff's claim, has never informed the plaintiff that he intended to leave the State; and yesterday, after having made full preparations to leave this day, he promised the plaintiff to pay to-morrow at plaintiff's office.*

(Subscribed and sworn to.)

\*It goes without saying, that a form sufficient in Superior is good in inferior Courts. It may be unnecessarily full, but it will be ample under the same state of facts; but forms sufficient in inferior tribunals may be lacking in precision when used in Superior Courts. Under this head,—“Justices' Courts,”—will be found many forms full and precise enough for almost any supposable state of facts in *any Court*. In California the proceedings on Arrest, Attachment, Execution, Replevin, Forcible Entry, Landlord and Tenant, Depositions, Contempt, etc., are the same in all Courts, and the forms are substantially the same. In this book the form printed in the text is sufficient for California and for all other States where the statutes are similar.

NOTE 1.—Cal. C. C. P., secs. 481-561. See No. 521 and notes.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 3542.

NOTE 3.—In Idaho the same, and in an action to recover a fine or penalty; but a female cannot be arrested. Rev. Stats., sec. 4680.

NOTE 4.—In Montana the same as in California, and also for willful injury to the person, to character, or to property, knowing the property to belong to another. A female cannot be arrested. C. C. P., sec. 801.

NOTE 5.—In Utah the same as in California, except a female cannot be arrested. Comp. Laws, sec. 347.

NOTES 6 AND 7.—In North and South Dakota arrest not allowed in Justices' Courts.

NOTE 8.—In Wyoming when a debtor has removed or begun to remove his property out of county to defraud creditors, or to change it into money for the purpose of defrauding. In other respects, substantially the same as in California. Rev. Stats., sec. 2796.

NOTE 9.—In Washington the same general form as in California, but for many more causes. Hill's Stats. and Codes, sec. 228.

NOTE 10.—In Oregon the same form. Hill's Antd. Laws, sec. 108; but a female cannot be arrested except for an injury to person, character, or property. *Id.*

NOTE 11.—In Colorado a debtor can only be arrested after trial, and this only in cases of tort, malice, fraud, and willful deceit. Gen. Stats., secs. 164-9.

### No. 322.—Affidavit for Order of Arrest.

[TITLE OF COURT AND CAUSE.]

*Albert Homer*, the plaintiff in this suit, being duly sworn, deposes and says: That the said action is for the recovery of property converted to said defendant's own use, which was received by said defendant in a fiduciary capacity, and is pending in said Court.

And deponent further states and shows to the Court, that the following are facts and circumstances out of which said cause of action arose: [State facts.] ALBERT HOMER.

(Sworn to.)

NOTE.—See No. 321 and notes.

### No. 323.—Affidavit for Order of Arrest—Removal of Property.

[TITLE OF COURT AND CAUSE.]

*Gustavus Kohn*, the plaintiff in the above entitled action, being duly sworn, says: That the said action is for the recovery of money on a cause of action arising upon an express contract, and is pending in said Court, and that there is now due thereon from defendant to plaintiff the sum of one hundred and forty-five dollars.

That the said defendant has removed, concealed, and disposed of his property, with intent to defraud his creditors.

That the facts on which the application for an order of arrest of said defendant is founded are as follows, to wit:

*Said defendant has been engaged in the cigar and tobacco business, and during last night had all his tobacco and cigars, the exact value of which is unknown to said affiant, but which said affiant believes to be of the value of \$1500, or thereabouts, being all the property of said defendant not exempt from execution, conveyed from his place of business on Jackson street, in this city, to some place or places to the said affiant unknown, and has to-day sold a large portion of said tobacco and cigars for cash; and falsely represents that he has only removed his stock, preparatory to putting it into a new*

place of business, which he is about to open in this city, at No. 210 Pacific street; and said affiant is informed by A. Sleek, the owner of the premises last aforesaid, that the same have not been leased to said defendant, and that said defendant has never applied to said Sleek for a lease of said premises, for any purpose whatever.

(Subscribed and sworn to.)

NOTE.—See No. 321 and notes.

### No. 324.—Affidavit for Order of Arrest—Fraudulent Debtor.

[TITLE OF COURT AND CAUSE.]

*Benjamin Hicks*, the plaintiff in the above entitled action, being duly sworn, says: That the said action is for the recovery of money [or damages], on a cause of action arising upon an express contract, and is pending in said Court, and that there is now due thereon from defendant to plaintiff two hundred and fifty dollars, and that the defendant in said action has been guilty of fraud in contracting the debt and incurring the obligation for which the said action is brought.

That the facts on which the application for an order of arrest of said defendant is founded, are as follows, to wit:

That said defendant came to the store of said plaintiff, in Center Township, in the County of Sacramento, on the fifteenth day of October last, and falsely represented himself to be the owner of real estate in said township, worth four thousand dollars, and that his debts did not amount to over one thousand dollars, and thereupon purchased of the said plaintiff goods and merchandise for the sum of two hundred and fifty dollars, agreeing to pay for the same on the following day; whereas, in truth and in fact, said defendant is not the owner of any real estate whatever, and is indebted to various parties in this State in over two thousand dollars, and is wholly irresponsible. And said defendant, immediately after the purchase of said goods and merchandise, sold the same at less than one-half their real value, for cash, to one George Jones, in said county.

(Subscribed and sworn to.)

NOTE.—See No. 321 and notes.

### No. 325.—Affidavit for Attachment Against Resident.

[TITLE OF COURT AND CAUSE.]

STATE OF California, )  
County of Los Angeles. } ss.

*Henry A. Sampson*, being duly sworn, says that he is the plaintiff in the above entitled action; that the defendant, *Sampson A. Henry*, in said action, is indebted to the plaintiff in the sum of one hundred dollars, gold coin of the United States, over and above all legal set-offs, or counter claims, upon an express contract for the direct payment of money, to wit:



*On a certain promissory note for one hundred dollars, bearing date January 12, 1894, payable thirty days after date, without grace.*

And that such contract was made and is payable in this State, and the payment of the same has not been secured by any mortgage or lien upon real or personal property, or any pledge of personal property; and that the said attachment is not sought, and the said action is not prosecuted to hinder, delay, or defraud any creditor of the defendant.

(Subscribed and sworn to.)

NOTE 1.—In California, C. C. P., secs. 538, 866. See Superior Courts.

NOTE 2.—In Nevada the same general form is used. Gen. Stats., sec. 3146.

NOTE 3.—In Idaho same as California. Rev. Stats., sec. 4303.

NOTE 4.—In Montana the same as in California. C. C. P., secs. 890, 1560.

NOTE 5.—In Utah, see Attachment—Superior Court.

NOTE 6.—In North and South Dakotas the affidavit must state that a cause of action exists. That defendant is either a foreign corporation or a non-resident of the State. That defendant has removed, or is about to remove, property beyond the State to defraud creditors; or has, or is about to, dispose of his property, for the same purpose; or that he has departed from the State to defraud creditors, or to avoid service of summons; or that the debt arose out of false pretense. Comp. Laws, sec. 4995.

NOTE 7.—In Wyoming the same as in Dakota. Rev. Stats., sec. 3541.

NOTE 8.—In Washington the same as in Dakota. Hill's Stats., C. of P., sec. 289.

NOTE 9.—In Oregon the same form is used as in California. Hill's Stats. and Codes, sec. 144.

NOTE 10.—In Colorado the same as in Dakota. Mills' Antd. Stats., sec. 2700.

NOTE 11.—In Arizona the same form used as in Dakota. Rev. Stats., sec. 40.

### No. 326.—Affidavit on Claim and Delivery.

[TITLE OF COURT AND CAUSE.]

*Ezra Hollis*, being duly sworn, says that he is the *plaintiff* in the above entitled action; that the said *plaintiff* is the owner of and is lawfully entitled to the possession of the following personal property, to wit:

[Description.]

That the said property is in the possession of, and wrongfully detained by the *defendant* in said action, and that the alleged cause of said detention, according to this affiant's best knowledge, information, and belief, is as follows, to wit: [State cause of detention, viz: *Defendant claims that he owns the said property; or he claims a lien on the same for alleged repairs; or he claims that the same was pledged to him by plaintiff to secure a debt; or he claims a lease of the same, etc.*]

That the said property, nor any part thereof, has not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under an execution or an attachment against the property of the said *plaintiff*, and that the actual value of the said property is two hundred and fifty dollars. [If the property has been seized under execution or attachment, so state in the affidavit, and add that it is by statute exempt from execution, if such is a fact.]

(Subscribed and sworn to.)

THE PEOPLE OF THE STATE OF *California*, to the Sheriff or any Constable of the County of *Yolo*, Greeting:

You are hereby directed to take the within described property from the within named defendant.

Witness, *etc.*

NOTE 1.—In California, Nevada, Idaho, Montana, Utah, North and South Dakotas, see same form in Superior Court and notes.

NOTE 2.—In Wyoming the same general form as in California. Rev. Stats., sec. 3523.

NOTE 3.—In Washington the same form as in California. Hill's Stats., sec. 1491.

NOTE 4.—In Oregon the same as in Washington. Hill's Laws, secs. 133, 2064.

NOTE 5.—In Colorado the same as in Washington. Mills' Stats., sec. 2628.

NOTE 6.—In Arizona the same form as in California. Rev. Stats. sec. 100.

### No. 327.—Affidavit for Transfer of Action.

[TITLE OF COURT AND CAUSE.]

*Marcus Paul*, the defendant, in the above entitled action, being duly sworn, says that he has reason to believe, and does believe, that he cannot have a fair and impartial trial before the Justice before whom this action is brought, by reason of the prejudice and bias of the said Justice. [*State facts upon which such belief is founded, as: The said Justice is a partner of the plaintiff; or he is interested in the result of this action, having agreed with plaintiff that his fee should abide the result.*]

(Subscribed and sworn to.)

NOTE 1.—In California, when the Justice is a witness, when a fair trial cannot be had before the Justice, and when a jury is demanded and an affidavit shows that a fair trial cannot be had on account of bias or the prejudice of the people, etc., the place of trial may be changed. C. C. P., sec. 833.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 3562.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 4125.

NOTE 4.—In Montana the same. C. C. P., secs. 615-617.

NOTE 5.—In Utah the same. Comp. Laws, sec. 3193.

NOTE 6.—In North and South Dakota the same as in California. Comp. Laws., sec. 6045.

NOTE 7.—In Wyoming the same as in California. Rev. Stats., sec. 3441.

NOTE 8.—In Washington the same general form as in California. Hill's Stats., sec. 163.

NOTE 9.—In Oregon the same as in Washington. Hill's Laws, sec. 45.

NOTE 10.—In Colorado the same as in California. Mills' Stats., sec. 2664.

NOTE 11.—In Arizona the same general form as in California. Rev. Stats., sec. 1404.

### No. 328.—Affidavit—Change of Place of Trial—Bias or Prejudice.

[TITLE OF COURT AND CAUSE.]

*J. B.*, being duly sworn [*as in the preceding*]: *That a jury trial has been demanded by the plaintiff in this action; that he believes that he cannot have a fair and impartial trial in the township and Court before which the summons herein is made returnable, on account of the bias and prejudice of the citizens of said township against him.*

(Subscribed and sworn to, *etc.*)

NOTE.—See No. 327 and notes.

**No. 329.—Affidavit on Change of Place of Trial—Interest, Bias, Prejudice of Justice.**

[TITLE OF COURT AND CAUSE.]

*J. B.*, being duly sworn, says: That he is the defendant in the above entitled action; that he believes that he *cannot have a fair and impartial trial before S. C., Esq., the Justice of the Peace before whom the summons herein is made returnable*, by reason of the [*interest, prejudice, or bias of said Justice*] interest of said Justice in the result of this action.

Wherefore, *etc.*

(Subscribed and sworn to.)

NOTE.—See No. 327.

**No. 330.—Affidavit on Change of Place of Trial—Justice a Witness.**

[TITLE OF COURT AND CAUSE.]

*J. B.*, being duly sworn, says: That he is the defendant in the above entitled action; that *S. C., Esq.*, the Justice of the Peace before whom the summons herein is made returnable, will be a material witness for the defendant herein at the trial of said action; that this action is one founded on a *promissory note made by defendant and payable to plaintiff*; that the only defense to said action is *part payment of said note by defendant*; that defendant expects to prove by the said *S. C., Esq.*, that he, the said *S. C., Esq.*, saw defendant *pay plaintiff the sum of one hundred dollars, after said note was due, and heard him direct plaintiff to apply said payment on said note, and heard plaintiff promise defendant that he would apply said payment as directed*; that no other person except plaintiff, defendant, and said *S. C., Esq.*, was present when said *payment was made*, and defendant is informed and believes, and therefore avers, that plaintiff disputes said payment.

NOTE.—See No. 327.

**No. 331.—Affidavit that Justice is a Witness—Arrest.**

[TITLE OF COURT AND CAUSE.]

*A. L. G.*, the defendant in the above entitled action, being duly sworn, says that *A. B. C. D., Esq.*, the Justice of the Peace for *San Mateo Township*, in said county, who issued the order of arrest herein, is a material witness for defendant herein; that he expects to prove by said *A. B. C. D., Esq.*, that the plaintiff herein, previous to the making of said order of arrest, *while being examined as a witness in the case of A. B. vs. C. D., then on trial before the said A. B. C. D., Esq., Justice of the Peace, testified that he knew this defendant was about to leave the State of California, by the way of Panama, for the purpose of proceeding to Washington, D. C., to secure a patent on a double-scouring, complex soaping and ammoniacal sulphurated, bleaching, long-handled washing ma-*



*chine; and that the plaintiff was the patentee of a rival machine for accomplishing the same purpose, and that he intended to do his best to keep defendant away from said City of Washington.*

(Subscribed and sworn to.)

NOTE.—See No. 327.

### No. 332.—Affidavit to Set Aside Default Judgment.

[TITLE OF COURT AND CAUSE.]

*A. B. C.*, the defendant herein, deposes and says: That he is the defendant herein; that the summons in this action was served on him on the *third* day of *June, 1894*; that on the day on which he should appear as commanded by said summons he did appear as commanded, and offered to make answer to the complaint herein; that he was then informed by *A. L. P., Esq.*, the Justice of the Peace presiding in said Court, that judgment by default had been entered against him on the previous day, and for that reason he was prevented from answering therein; [*that he has fully and fairly stated the case in this cause to A. W. C., his counsel, who resides at Blacktown, County of Grey, and after such statement he is advised by him that he has a good and substantial defense on the merits of this action, and verily believes the same to be true*].

(Subscribed and sworn to.)

NOTE.—Cp<sup>1</sup>. C. C. P., sec. 859.

### No. 333.—Affidavit for Continuance.

[TITLE OF COURT AND CAUSE.]

*A. B.*, being duly sworn, says: That he is the *defendant* in the above entitled action; that he can not safely go to trial before *ninety* days from the date hereof, on account of the absence of *A. L. P.*, who is a material witness for defendant; that a subpoena in said cause was duly issued on the *first* day of *March, 1894*, and placed in the hands of the Constable of said township for service on the same day; that on the *second* day of *said month of March*, the said subpoena was by said Constable duly served on the said *A. L. P.*, in said township; that said subpoena commanded the said *A. L. P.* to be present in this Court at the hour of *ten o'clock A. M.* of this day, to testify on behalf of defendant; that after said subpoena was served the said *A. L. P. was taken violently sick, and was removed from said county, and is now at Coronado Beach in the County of San Diego, in said State, and is too sick to submit to examination by deposition; that the evidence of the said A. L. P. is material for defendant's defense; that he will prove by said witness that [here state the facts the witness will testify to].* And defendant says that the said facts cannot, to his knowledge, be proved by any other witness; and that the application is not made for delay, but that justice may be done in the premises, and affiant

believes that, if this case be continued for three months, he will be able to have said witness present to testify as aforesaid.

(Dated, signed, and sworn to.)

NOTE 1.—In California, in certain contingencies, as indicated in this form and in other cases, the trial may be postponed upon affidavit showing good cause. C. C. P., sec. 876.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 3182.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 8287.

NOTE 4.—In Montana the same. C. C. P., secs. 1590-1592.

NOTE 5.—In Utah the same. Comp. Laws, sec. 3564.

NOTE 6.—In North Dakota and South Dakota. Comp. Laws, sec. 6085.

NOTE 7.—In Wyoming the same as in California. Rev. Stats., sec. 3434.

NOTE 8.—In Washington the same as in California. Hill's Stats., sec. 1517.

NOTE 9.—In Oregon the same form as in California. Hill's Laws, sec. 179.

NOTE 10.—In Colorado the same form as in California. Mills' Stats., sec. 2646.

NOTE 11.—In Arizona the same form as in California. Rev. Stats., sec. 2215.

### No. 334.—Attachment for Defaulters.

STATE OF *California*, }  
County of *San Mateo*. } Justice's Court, *Pulgas Township*.

THE PEOPLE OF THE STATE OF *California* to the Sheriff or any Constable of said county, Greeting:

You are hereby commanded forthwith to attach the body of *James Casey*, defaulting juror, and have him before our said Court, on the *twenty-ninth* day of *January, 1894*, at *ten* o'clock, A. M. then and there to show cause why he should not be punished for contempt in disobeying the order summoning him to appear and serve as a juror in said Court.

GEORGE W. FOX.

(Dated and signed.)

NOTE.—California C. C. P., sec. 238. The same form may be used everywhere.

### No. 335.—Complaint—Criminal Procedure—Robbery.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*, }  
County of *Marin*. } ss.

Personally appears before me, this *seventh* day of *August, A. D. 1894*, *J. J.*, who, on oath, makes complaint, and deposes and says, that on the *first* day of *August, A. D. 1894*, in the County of *Marin*, State of *California*, the crime of robbery was committed, to wit: by *J. G.*, who then and there did feloniously and with force and arms make an *assault upon said J. J.*, and with violence to his person, and against his will, did then and there feloniously and violently steal, take, and carry away by force from the person of the said *J. J.*, *one gold watch of the value of one hundred dollars*, and of the personal property of said *J. J.*, all of which is contrary to the form, force, and effect of the statute in such cases made and provided, and against the peace and dignity of the people of the State of *California*. And this complainant, upon oath, accuses

the said J. G. of having committed the said crime; and this complainant further alleges and deposes that the said accused was arrested therefor, and prays that the said accused may be brought before a magistrate and dealt with according to law.

(Subscribed and sworn to.)

### No. 336.—Complaint—Criminal—Indorsement on.

[TITLE OF COURT AND CAUSE.]

[Indorsement on the back of a complaint, which may be made when additional depositions are deemed necessary] as follows:

*City and County of San Francisco, ss.*

A. B., being duly sworn and examined, upon oath, testifies and says, that he knows the contents of the complaint on the other side of this document; that on the first day of August, 1894, in this city and county, the property described in said complaint was feloniously taken and carried away; that the taking was not under claim of right, and said property was then of the value of one hundred dollars, and was the said J. J.'s personal property; that said property was taken against his (the said J. J.'s) will and by force from his person; that J. G., the accused in said complaint, did then and there take the said property with violence from the person of the said J. J.

(Subscribed and sworn to.)

NOTE 1.—In California when a complaint (information) is laid before a magistrate of the commission of a public offense, triable within the county, he must examine on oath the informant or prosecutor and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them. The deposition must state the facts constituting the offense. In California Justices of the Supreme Court, Judges of the Superior Courts, and Justices of the Peace are magistrates. A magistrate does not try a defendant and punish him, if guilty; he inquires into the facts constituting the alleged offense, and, if the facts warrant, he commits him for trial before a Court having jurisdiction. Cal. Pen. Code, sec. 806.

NOTE 2.—In Nevada the same as in California. Gen. Stats., sec. 3988.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 7516.

NOTE 4.—In Montana the same substantially as in California. Pen. Code, secs. 1590-1594.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 4872.

NOTE 6.—In North and South Dakotas the same as in California. Comp. Laws, sec. 6147.

NOTE 7.—In Wyoming the proceedings are the same as in California. Rev. Stats., secs. 3180-1.

NOTE 8.—In Washington the same as in California. Hill's Stats., sec. 1570.

NOTE 9.—In Oregon the same as in California. Hill's Laws, sec. 1549.

NOTE 10.—In Colorado the same form as in California. Mills' Stats., sec. 1432.

NOTE 11.—In Arizona the same as in California. Rev. Stats., Pen. Code, sec. 1334.

### No. 337.—Complaint and Deposition.

[TITLE OF COURT AND CAUSE.]

STATE OF California, }  
County of Sacramento. } ss.

Now comes J. E., who, being duly sworn, deposes and says, that on the twenty-fourth day of May, A. D. 1894, in the County of Sacramento, State of California, the crime of burglary was committed,



to wit: by *J. F.* (whose real name is unknown to this complainant), who then and there did willfully, unlawfully, and feloniously [state the offense], contrary, *etc.*, [as in No. 335].

(Subscribed and sworn to.)

EXAMINATION AND DEPOSITION TAKEN IN SUPPORT OF THE ABOVE COMPLAINT.

STATE OF *California*, }  
County of *Sacramento*. } ss.

*J. E.*, being duly sworn and examined, upon oath, deposes and says, as follows:

Question—State the facts upon which you base the foregoing charge.

Answer—Stating the facts [not on information or belief, but positively].

(Subscribed and sworn to.)

No. 338.—Complaint—Forgery.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*, }  
County of *Alameda*. } ss.

Personally appears before me, this *twelfth* day of *May*, *A. D.* 1894, *W. F.*, who, on oath, makes complaint, and deposes and says, that on the *fourteenth* day of *April*, *A. D.* 1894, in the County of *Alameda*, State of *California*, the crime of forgery was committed, to wit: by *P. B.* (whose real name is unknown to this complainant), who then and there did willfully, unlawfully, feloniously, and fraudulently make and forge a certain promissory note, in the words and figures following, to wit: [describe the offense], and then and there, well knowing the same to be false and forged, did then and there willfully and unlawfully, feloniously and fraudulently, utter, publish, and pass the same as genuine and true to *W. F.*, the said complainant, all with intent then and there to prejudice, damage, and defraud said *W. F.*, contrary, *etc.*, [as in No. 335]. And this complainant, upon oath, accuses the said *P. B.* of having committed the said crime; and this complainant further alleges and deposes that the said accused was then and there arrested therefor in the actual commission of the said offense, and prays that the said accused may be brought before a magistrate and dealt with according to law.

(Subscribed and sworn to.)

No. 339.—Complaint—Assault with Deadly Weapon.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*, }  
County of *Sierra*. } ss.

Personally appears before me, this *twenty-third* day of *May*,

*A.D. 1894, C. W., who, on oath, makes complaint, and deposes and says: that on the third day of May, A.D. 1894, in the County of Sierra, State of California; the crime of assault upon the person of another with a deadly weapon, with intent to do bodily harm, and without just cause or excuse, and when no considerable provocation appears, was committed, to wit: by J. B. (whose real name is unknown to this deponent), who then and there did willfully, unlawfully, and feloniously, and with force and arms, without just cause or excuse, make an assault upon C. W. with a deadly weapon, to wit: a Winchester rifle, and did then and there, with an intent to do bodily harm to and upon the person of said C. W., there being no considerable provocation therefor, contrary, etc., [as in No. 335].*

(Subscribed and sworn to.)

### No. 340.—Complaint—Assault to Murder.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
City and County of *San Francisco*. } ss.

Personally appears before me this *third day of July, A.D. 1894*, *J. H.*, who, on oath, makes complaint, and deposes and says that on the *first day of July, A.D. 1894*, in the County of *Placer*, State of *California*, the crime of an assault with an intent to commit murder was committed, to wit: by *J. K.* (whose real name is unknown to this complainant), who then and there did unlawfully, feloniously, willfully, and with malice aforethought, make an assault upon *J. H.* with a deadly weapon, to wit: a *shotgun*, and did then and there make said assault; and all with an intent feloniously, willfully, and unlawfully, and with malice aforethought, to *kill and murder said J. H.*; all of which is contrary, etc., [as in No. 335].

(Subscribed and sworn to.)

### No. 341.—Complaint—Receiving Stolen Goods.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
County of *El Dorado*. } ss.

Personally appears before me this *third day of May, A.D. 1894*, *P. P.*, who, on oath, makes complaint, and deposes and says that on the *thirtieth day of April, A. D. 1894*, in the County of *El Dorado*, State of *California*, the crime of felony was committed, to wit: by *J. J.* (whose real name is unknown to this complainant), as follows, to wit: that on the *thirtieth day of April, A.D. 1894*, at said county, one *J. B.* (whose real name is unknown to this complainant), did willfully, unlawfully, and feloniously steal, take, and carry away a *diamond ring* of the value of *one hundred dollars*, of the personal property of *J. G.* (whose real name is unknown to this complainant), and that thereafter, to wit: on the

said *thirtieth* day of *April*, *A.D. 1894*, at said county, the said *J. J.* did willfully, unlawfully, knowingly, feloniously, and for his own gain, and to prevent the owner, the said *J. G.*, from again possessing his said personal property, *buy and receive from said J. B. the said diamond ring*, and the said *J. J.* then and there, well knowing the same to have been stolen, as aforesaid stated; all of which is contrary, *etc.* [*as in No. 335*].

(Subscribed and sworn to.)

### No. 342.—Complaint—Burglary—First Degree.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*, }  
County of *Tulare*. } ss.

Personally appears before me this *fourteenth* day of *June*, *A.D. 1894*, *J. B.*, who, on oath, makes complaint, and deposes and says, that on the *thirtieth* day of *May*, *A.D. 1894*, in the County of *Tulare*, State of *California*, the crime of *burglary* of the first degree was committed, to wit: by *C. B.*, who then and there, in the night time of said day, did feloniously, forcibly, and burglariously break and enter the house, room, shop, warehouse, store, and building of *W. C.*, there situate, with intent to commit grand larceny, and did there and then feloniously and burglariously steal, take, and carry away one *gold watch* of the value of *two hundred* dollars, and of the personal property of *W. C.*, contrary, *etc.*, [*as in No. 335*].

(Subscribed and sworn to.)

### No. 343.—Complaint—Search Warrant—Larceny.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*, }  
County of *Alameda*. } ss.

Personally appears before me this *third* day of *April*, *A.D. 1894*, *C. H.*, who, on oath, makes complaint, and deposes and says, that on the *eighteenth* day of *March*, *A.D. 1894*, in the County of *Alameda*, State of *California*, the crime of grand larceny was committed, to wit: by *J. F.* (whose real name is unknown to this complainant), who then and there did unlawfully and feloniously steal, take, and carry away one *gold hunting-case watch*, No. 1827, made by the *Judson Manufacturing Company*, *Alameda County, California*, of the value of *one hundred* dollars, and of the personal goods and property of *C. H.* And this deponent further deposes and says that he has, and there is, just, probable, and reasonable cause to believe, and that he does believe, that said personal goods and property are now concealed in the house of *S. J.*, 3249 *Claymore street*, between *Evalina* and *Evangelina streets*, in said county, all of which is contrary to the form, force, and effect of the statute in such cases made and provided, and against



the peace and dignity of the people of the *State of California*. And this complainant prays that a search warrant may issue for the recovery of said personal goods and property, and that the same may be brought before a magistrate, and disposed of according to law.

### No. 344.—Complaint—Misdemeanor—Gambling.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
City and County of *San Francisco*. } 83.

Personally appears before me this *third* day of *August*, A. D. 1894, C. W., who, on oath, makes complaint, and deposes and says, that on the *first* day of *August*, A. D. 1894, in the *City and County of San Francisco*, State of *California*, the crime of misdemeanor was committed, to wit: by J. R. (whose real name is unknown to this complainant), *who then and there did willfully and unlawfully open, deal, play, carry on, and conduct a certain banking game, to wit: the banking game of faro, then and there played with cards, and for money, and for checks as representatives of value*, contrary to the form, force, and effect of the statute in such cases made and provided, and against the peace and dignity of the people of the State of *California*; and this complainant, upon oath, accuses the said J. R. of having committed the said crime; and this complainant further alleges and deposes that the said accused was then and there arrested therefor in the actual commission of the said offense, and prays that the said accused may be brought before a magistrate, and dealt with according to law.

(Subscribed and sworn to.)

NOTE 1.—In California if an offense is committed not a felony, of which a Justice of the Peace has jurisdiction to try and determine, a complaint in writing is laid before him; he then, when the case is ready for trial, examines witnesses in the usual manner of Trial Courts. Pen. Code, sec. 1426.

NOTE 2.—In Nevada the same as in California. Gen. Stats., sec. 4177.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 8280.

NOTE 4.—In Montana the same as in California. The proceedings must be commenced by complaint, under oath, setting forth the offense as in the above form. A city or town ordinance may be referred to by title and section and number. Pen. Code, secs. 2680-2725.

NOTE 5.—In Utah the same as in California. Stats. 1891, p. 89; Comp. Laws, sec. 5305.

NOTE 6.—In North Dakota the same as in California. Stats. 1893, p. 204; Comp. Laws, sec. 6147.

NOTE 7.—In South Dakota the same as in California. Stats. 1893, p. 46; Comp. Laws, sec. 6147.

NOTE 8.—In Wyoming the statute prescribes a form which is embraced within the California form. Rev. Stats., sec. 3621. The complaint is known as an "Information."

NOTE 9.—In Washington the same as in California. Hill's Stats., sec. 1559.

NOTE 10.—In Oregon the same as in California. Hill's Laws, sec. 1549. Any magistrate may read the complaint and issue the warrant. If the complaint charges a felony the person issuing the warrant examines and commits for trial. If the offense be a misdemeanor the defendant is taken before a Justice of the Peace and tried. *Id.*, sec. 1560.

NOTE 11.—In Colorado the same form as in California. Mills' Stats., sec. 1484. But in cases of assault, assault and battery, and affrays, a Justice of the Peace may "upon his own knowledge," or upon the oath of any competent person, issue his warrant. *Id.*, sec. 2766. In some respects, he is truly a representative of the ancient "watch," who made his rounds with his staff, lantern, and whip.

NOTE 12.—In Arizona the same form as in California. Rev. Stats., sec. 2208.

**No. 345.—Complaint—Possession of Gambling Tools.**

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
*City and County of San Francisco.* } ss.

Personally appears before me this *fourteenth* day of *May*, A. D. 1894, *J. W.*, who, on oath, makes complaint, and deposes and says, that on the *first* day of *May*, A. D. 1894, in the *City and County of San Francisco*, *J. G.* had in his possession one *faro-box and spring*, with thumb-lever attachment, and one case-keeper, which are now in the possession of *J. G.* (whose real name is unknown to this complainant), in a certain house and on certain premises there situate, occupied by and under the control of said *J. G.*, to wit: *429 Adeline street*, between *Emeline and Evangeline streets*, in this *City and County of San Francisco*, with intent there to use the same as the means of committing a public offense, to wit: *the offense of opening, dealing, playing, and carrying on the banking game of faro for money*, all of which is contrary, etc., [as in No. 335].

(Subscribed and sworn to.)

**No. 346.—Complaint—Visiting Gambling-House.**

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
*City and County of San Francisco.* } ss.

Personally appears before me this *fourth* day of *May*, A. D. 1894, *C. P.*, who, on oath, makes complaint, and deposes and says, that on the *first* day of *May*, A. D. 1894, in the *City and County of San Francisco*, State of *California*, the crime of misdemeanor was committed, to wit: by *J. H.* (whose real name is unknown to this complainant), who then and there did willfully and unlawfully become and was a visitor to a certain house and place for the practice of gambling there situate, and in that portion of said *City and County of San Francisco* bounded by *Larkin, Market, Church, Eighteenth, and Channel streets and the Water Front*, thereby violating the provisions of section 33, order No. 1587, of the Board of Supervisors of said *City and County of San Francisco*, contrary to, etc., [as in No. 335].

(Subscribed and sworn to.)

**No. 347.—Complaint—Vulgar Language.**

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
*City and County of San Francisco.* } ss.

Personally appears before me this *fifteenth* day of *July*, A. D. 1894, *M. M.*, who, on oath, makes complaint, and deposes and says, that on the *thirteenth* day of *June*, A. D. 1894, in the *City and*

County of *San Francisco*, State of *California*, the crime of misdemeanor was committed, to wit: by *C. C.* (whose real name is unknown to this complainant), who then and there did willfully and unlawfully address to this complainant, and utter and speak vulgar and profane and obscene language and words, and language and words having a tendency to create a breach of the peace, in the presence and hearing of two or more persons, thereby violating the provisions of section 28, order No. 1587, of the Board of Supervisors, of said city and county; and the language and words then and there uttered by said *C. C.* were: "*You are a d—d lazy, miserable,*" etc., contrary, etc., [as in No. 335].

(Subscribed and sworn to.)

### No. 348.—Complaint—Obstructing Railroad.

[TITLE OF COURT AND CAUSE.]

STATE of *California*,  
City and County of *San Francisco*. } ss.

Personally appears before me, this *sixteenth* day of *June*, *A. D.* *1894*, *J. S.*, who, on oath, makes complaint, and deposes and says, that on the *second* day of *June*, *A. D.* *1894*, in the City and County of *San Francisco*, State of *California*, the crime of misdemeanor was committed, to wit: by *H. H.* (whose real name is unknown to this complainant), who then and there did willfully and unlawfully obstruct a certain railroad car then and there belonging to the *Kerosene Railroad Company*, a corporation, then and there existing under and by virtue of the laws of the State of *California*, to wit: did then and there willfully, unlawfully, and while said car was in motion and driving in and along and upon *Harrison street*, in said city and county, put and place a certain tin can in and upon, along and across, the track upon which said railroad car was then and there so driven upon said *Harrison street*, as aforesaid, and did then and there willfully and unlawfully stop, delay, hinder, and obstruct said railroad car in its passage in and upon and along said *Harrison street* as aforesaid, and did then and there willfully and unlawfully, in said manner, and by said means aforesaid, obstruct a certain railroad, said railroad being then and there the right and franchise granted to the *Kerosene Railroad Company*, thereby violating the provisions of sections 1 and 45, chapter 10, order No. 73, of the Board of Supervisors of said City and County of *San Francisco*, as amended by order No. 7 of said Board, all of which is contrary, etc., [as in No. 335].

(Subscribed and sworn to.)

### No. 349.—Complaint—Refusing to "Move on."

[TITLE OF COURT AND CAUSE.]

STATE of *California*,  
City and County of *San Francisco*. } ss.

Personally appears before me, this *nineteenth* day of *July*.



*A. D. 1894, P. W.*, who, on oath, makes complaint, and deposes and says, that on the *third day of July, A. D. 1894*, in the *City and County of San Francisco, State of California*, the crime of misdemeanor was committed, to wit: by *J. F.* (whose real name is unknown to this complainant), as follows: that is to say, that then and there the free passage of a public street, and the public sidewalk thereof, to wit: *Baxter street, between Broadway and Bunyan streets*, was obstructed by a crowd, it then and there not being an occasion of a public meeting; that said *J. F.* was then and there one of the persons composing said crowd; that this deponent was then and there and still is a police officer of the said city and county; that this deponent, as said *police officer*, did then and there request and direct said *J. F.* and the persons composing said crowd to disperse and move on, and said *J. F.* did then and there willfully, unlawfully, and knowingly refuse to move on and disperse, and then and there did unlawfully and knowingly refuse to move on and disperse when directed so to do by said *police officer*, as aforesaid, thereby violating the provisions of section 26, order No. 1587, of the Board of Supervisors of said City and County of San Francisco, as amended by order 1794 of said Board, all of which is contrary, etc., [as in No. 335].

(Subscribed and sworn to.)

#### No. 350.—Complaint—Rubbish on Street, Depositing.

[TITLE OF COURT AND CAUSE.]

STATE OF California, }  
City and County of San Francisco. } ss.

Personally appears before me, this *second day of May, A. D. 1894*, *J. E.*, who deposes and says, that on the *thirtieth day of April, A. D. 1894*, in said city and county, the crime of misdemeanor was committed, to wit: by *C. F.* (real name unknown), who then and there did unlawfully deposit on *Market street* a cartload of sand, within the limits of the said City and County of San Francisco, and not within that tract of land lying and being within the boundary of the said City and County of San Francisco, and described as follows:

[Description of Place.]

Thereby violating the provisions of section 2, order No. 1587, of the Board of Supervisors of said City and County of San Francisco, all of which is contrary, etc., [as in No. 335].

(Subscribed and sworn to.)

#### No. 351.—Complaint—Rubbish on Street.

[TITLE OF COURT AND CAUSE.]

STATE OF California, }  
City and County of San Francisco. } ss.

Personally appears before me, this *fourth day of August, A. D. 1894*, *J. P.*, who, on oath, makes complaint, and deposes and says

that in the *City and County of San Francisco, State of California*, the crime of misdemeanor was committed, to wit: by *J. B.* (whose real name is unknown to this complainant), as follows: that is to say, that there, on the *first day of July, A. D. 1894*, and since then, said *J. B.* was, has been, and still is the owner, tenant, occupant, and lessee of a certain building, land, and premises fronting on a certain public street there situate, to wit:

## [Description.]

That earth, sand, rock, stones, dust, filth, rubbish, garbage, hay, straw, and matter had accumulated on said *Carpenter street* in front of said building, land, and premises; that the Superintendent of Public Streets, Highways, and Squares of said city and county, caused a notice to be duly served on and personally delivered to said *J. B.*, requiring him, said *J. B.* to remove said earth, sand, rock, stones, dust, filth, rubbish, garbage, hay, straw, and matter from in front of said building, land, and premises, from the line of said building, land, and premises to the center of said *Carpenter street*; that more than three days have elapsed since said notice was served and received by said *J. B.* as aforesaid, yet said *J. B.* has willfully and unlawfully neglected and refused, and still does willfully and unlawfully neglect and refuse, to remove said earth, sand, rock, stones, dust, filth, rubbish, garbage, hay, straw, and matter from in front of said building, land, and premises, from the line thereof to the center of said *Carpenter street*, or from any portion of said *Carpenter street*, in front of said building, land, and premises, thereby violating the provisions of section 11, order No. 1538, of the Board of Supervisors of said *City and County of San Francisco*, contrary, etc., [as in No. 335].

(Subscribed and sworn to.)

## No. 352.—Complaint—Privy Not Connected with Sewer.

## [TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
*City and County of San Francisco.* } 33.

Personally appears before me, this *fourth day of March, A. D. 1894*, *J. D.*, who, on oath, makes complaint, and deposes and says, that on the *thirtieth day of January, A. D. 1894*, in the *City and County of San Francisco, State of California*, the crime of misdemeanor was committed, to wit: by *R. R.* (whose real name is unknown to this complainant), who then and there did willfully and unlawfully maintain upon certain premises there situate, occupied, and owned by and under the control of the said *R. R.*, to wit: No. 403 *Rudolph street*, between *Emma and John streets*, a certain privy, without connecting the said privy with the street sewer in said *Rudolph street* in such a manner that said privy can and could be effectually drained and purified, there being then and there a street sewer in said *Rudolph street*, on which said premises are situated, with which said privy can and could be connected,



thereby violating the provisions of section 4, order No. 1587, of the Board of Supervisors of the *City and County of San Francisco*, all of which is contrary, etc., [as in No. 335].

(Subscribed and sworn to.)

### No. 353.—Complaint—Maintaining a Nuisance.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*, }  
*City and County of San Francisco.* } ss.

Personally appears before me, this *twelfth day of June, A. D. 1894, P. C.*, who, on oath, makes complaint, and deposes and says, that on the *first day of June, A. D. 1894*, at *409 Willow street*, between *Ash and Hickory streets*, in the *City and County of San Francisco*, State of *California*, the crime of misdemeanor was committed, to wit: by *J. M.* (whose real name is unknown to this complainant), who then and there did willfully and unlawfully suffer and permit certain premises there situate and belonging to and occupied by the said *J. M.* to become nauseous, foul, offensive, and prejudicial to public health and public comfort, to wit: *he caused the drainage from his bathroom and kitchen-sink to empty into the basement of the house occupied by him on said premises*, thereby violating the provisions of section 6, order No. 1587, of the Board of Supervisors of said *City and County of San Francisco*, all of which is contrary, etc., [as in No. 335].

(Subscribed and sworn to.)

### No. 354.—Complaint—Doing Business Without License.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*, }  
*City and County of San Francisco.* } ss.

Personally appears before me, this *thirteenth day of June, A. D. 1894, J. J.*, who, on oath, makes complaint, and deposes and says, that on the *first day of June, A. D. 1894*, in the *City and County of San Francisco*, State of *California*, the crime of misdemeanor was committed, to wit: by *P. P.* (whose real name is unknown to this complainant), who then and there, at a fixed place of business, to wit: at *No. 419 Willow street*, between *Ash and Hickory streets*, willfully and unlawfully did engage in carrying on, pursuing, and transacting the business, trade, occupation, and employment of selling, and did sell, goods, wares, and merchandise, to wit: *selling dry goods*, without taking out and procuring the license therefor prescribed and required by law, and the said goods, wares, and merchandise were not then and there agricultural or vinicultural productions, or productions of any stock, dairy, or poultry farm of said State, sold by the producer thereof, and were not then and there sold by an auctioneer at public sale, under license, all of which is contrary, etc., [as in No. 335].

(Subscribed and sworn to.)



**No. 355.—Complaint — Doing Business Without License—Ordinance.**

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
*City and County of San Francisco.* } ss.

Personally appears before me, this *twenty-fourth day of July, A. D. 1894*, *W. W.*, who, on oath, makes complaint, and deposes and says, that on the *second day of July, A. D. 1894*, in the *City and County of San Francisco, State of California*, the crime of misdemeanor was committed, to wit: by *J. B.* (whose real name is unknown to this complainant), who then and there was willfully and unlawfully engaged in, and did then and there willfully and unlawfully engage in, transact, and carry on the business, trade, profession, and calling of keeping a fruit store at *No. 7 Dupont street, without having first taken out and procured the municipal license required by ordinance of the Board of Supervisors of the said City and County of San Francisco, thereby violating the provisions of section 2, order No. 1589, of the Board of Supervisors of the said City and County of San Francisco, all of which is contrary, etc., [as in No. 335].*

(Subscribed and sworn to.)

**No. 356.—Complaint — Keeping Minor in House of Prostitution.**

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
*City and County of San Francisco.* } ss.

Personally appears before me, this *fourth day of July, A. D. 1894*, *J. C.*, who, on oath, makes complaint, and deposes and says, that on the *first day of July A. D. 1894*, in the *City and County of San Francisco, State of California*, the crime of misdemeanor was committed, to wit: by *W. L.* (whose real name is unknown to this complainant), who then and there being the proprietor, keeper, manager, conductor, and person having the control of a certain house of prostitution, and house and room resorted to for the purpose of prostitution, there situate, did willfully and unlawfully admit and keep a certain minor, to wit: *E. K.* (whose real name is unknown to this deponent), of the age of *seventeen years*, therein, contrary, etc., [as in No. 335].

(Subscribed and sworn to.)

**No. 357.—Complaint—Minor Employed in Exhibition.**

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
*City and County of San Francisco.* } ss.

Personally appears before me, this *twenty-third day of June, A. D. 1894*, *W. B.*, who, on oath, makes complaint, and deposes

and says, that on the *second day of June, A. D. 1894*, in the *City and County of San Francisco, State of California*, the crime of misdemeanor was committed, to wit: by *J. G.* (whose real name is unknown to this complainant), who then and there being a parent, to wit: the father of *C. G.*, and then and there having the care, custody, and control of a certain *child under the age of sixteen years, to wit: C. G.* (whose real name is unknown to deponent), of the age of fourteen years, *did then and there willfully and unlawfully exhibit, use, and employ said child in and for the vocation, occupation, service, and purpose of dancing for hire in a public saloon, to wit: at No. 11,293 Vavenue, contrary to, etc., [as in No. 335].*

(Subscribed and sworn to.)

### No. 358.—Complaint—Common Drunkard.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*, }  
*City and County of San Francisco.* } ss.

Personally appears before me, this *thirteenth day of August, A. D. 1894*, *W. K.*, who, on oath, makes complaint, and deposes and says, that on the *second day of August, A. D. 1894*, and from said *second day of August, A. D. 1894*, up to the time of the making of this complaint, in the *City and County of San Francisco, State of California*, the crime of misdemeanor was committed, to wit: by *J. C.* (whose real name is unknown to this complainant), who then and there, and from said *second day of August, A. D. 1894*, up to the time of the *making of this complaint, not being a California Indian, there unlawfully was, has been, and still is, a common drunkard, all of which is contrary, etc., [as in No. 335].*

(Subscribed and sworn to.)

### No. 359.—Complaint—Obstructing Streets.

[TITLE OF COURT AND CAUSE.]

STATE OF CALIFORNIA, }  
*City and County of San Francisco.* } ss.

Personally appears before me, this *third day of May, A. D. 1894*, *J. E.*, who, on oath, makes complaint, and deposes and says, that on the *first day of May, A. D. 1894*, at *11 Adeline street, between William and Mary streets*, in the *City and County of San Francisco, State of California*, the crime of misdemeanor was committed, to wit: by *C. F.* (whose real name is unknown to this complainant), who then and there owning, occupying, and having control of certain premises there situate, did then and there willfully and unlawfully cause to be placed and suffer to remain in

front of said premises, upon the sidewalk of said street, and the half of said street next to said premises, a threshing-machine, which was then and there an obstruction, and which unlawfully did then and there obstruct the passage of said street and sidewalk for more than one hour at a time, the said street and sidewalk being then and there a public street and public sidewalk in said city and county, the said threshing-machine then and there unlawfully remaining upon said street and sidewalk for more than one hour at a time and was not merchandise or goods in the actual course of receipt, delivery, or removal, and was not lamp-posts, nor hydrants, nor ornamental trees, nor barriers for the protection of ornamental trees, nor watering-troughs, nor material being used in the construction or repair of any building, thereby violating the provisions of section 11, order No. 1588, of the Board of Supervisors of said City and County of San Francisco, all of which is contrary to, etc., [as in No. 335].  
(Subscribed and sworn to.)

### No. 360.—Complaint—Discharging Firearms.

[TITLE OF COURT AND CAUSE.]

STATE OF California, }  
City and County of San Francisco. } 88.

Personally appears before me, this *thirty-first day of July, A. D. 1894, P. B.*, who, on oath, makes complaint, and deposes and says, that on the *twentieth day of July, A. D. 1894*, in the City and County of San Francisco, State of California, the crime of misdemeanor was committed, to wit: by *J. D.* (whose real name is unknown to this complainant), who then and there did willfully and unlawfully discharge and shoot off a certain firearm, to wit: a shotgun, within three hundred yards of a certain public highway and street there situate, to wit: *No. 3000 Julia street, and also within three hundred yards of a certain dwelling-house there situate, to wit: the dwelling-house of John Doe* (whose real name is unknown to this complainant), and within that portion of said city and county bounded by *Devisadero, Fell, Stanyan, Frederick, Fifteenth, Castro, Twenty-sixth, and Napa streets*, and the outer line of the street forming the *Water Front* of said city and county; the said *J. D.* then and there not having any special permission in writing from the Mayor of said city and county to then and there discharge and shoot off said firearm, to wit: said shotgun, and the said *J. D.* was not then and there shooting destructive animals within or upon his own inclosure, thereby violating the provisions of section 22, order No. 1587, of the Board of Supervisors of said City and County of San Francisco, contrary, etc. [as in No. 335].  
(Subscribed and sworn to.)



**No. 361.—Complaint—Insufficient Fresh Air per Capita.**

[TITLE OF COURT AND CAUSE.]

STATE OF California, }  
 City and County of San Francisco. } ss.

Now comes *J. B.*, who, being duly sworn, deposes and says, that on the fourth day of April, A.D. 1894, in the City and County of San Francisco, State of California, the crime of misdemeanor was committed, to wit: by *Ah Chee* (whose real name is unknown to this complainant), as follows: that is to say, that then and there, and within the limits of an incorporated city and county, to wit: the City and County of San Francisco, a certain number of persons, to wit: three hundred persons, did willfully and unlawfully sleep and lodge in a certain room and apartment in a certain building, house, and structure there situate, on Dupont street, between Vallejo and Green streets, and within the limits of said incorporated city and county; that said room and apartment did then and there and does contain less than five hundred cubic feet of space in the clear for each and every person then and there sleeping in and lodging in said room and apartment, and so occupying said room; that said *Ah Chee* then and there did willfully and unlawfully use and hire said room and apartment for the purpose of sleeping therein and lodging therein, said room and apartment then and there containing less than five hundred cubic feet of space in the clear for each and every person then and there sleeping therein and lodging therein; and that the said *Ah Chee*, with a certain number of other persons, to wit: three hundred persons, did then and there willfully and unlawfully sleep and lodge in said room and apartment, the said room and apartment then and there containing less than five hundred cubic feet of space in the clear for each and every person then and there sleeping therein and lodging therein as aforesaid; and said *Ah Chee* was then and there found sleeping and lodging in said room and apartment as hereinbefore alleged, contrary etc., [as in No. 335].

(Subscribed and sworn to.)

**No. 362.—Complaint—Keeping House of Ill-fame.**

[TITLE OF COURT AND CAUSE.]

STATE OF California, }  
 City and County of San Francisco. } ss.

Personally appears before me this fourteenth day of July, A. D. 1894, *C. L.*, who, on oath, makes complaint, and deposes and says, that on the third day of July, 1894, in the City and County of San Francisco, State of California, the crime of misdemeanor was committed, to wit: by *W. G.* (whose real name is unknown to this complainant), who then and there did willfully and unlawfully keep a certain house of ill-fame in said State, resorted to for the purpose of prostitution and lewdness, contrary, etc., [as in No. 335].

(Subscribed and sworn to.)

**No. 363.—Complaint—Visiting House of Ill-fame.**

[TITLE OF COURT AND CAUSE.]

STATE OF California, }  
 City and County of San Francisco. } ss.

Personally appears before me this *thirteenth day of July, A. D. 1894*, *J. F.*, who, on oath, makes complaint, and deposes and says, that on the *first day of July, A. D. 1894*, in the *City and County of San Francisco, State of California*, the crime of misdemeanor was committed, to wit: by *T. C.* (whose real name is unknown to this complainant), who then and there did willfully and unlawfully become, and was a visitor to a certain house of ill-fame there situate, and in that portion of said *City and County of San Francisco* bounded by *Larkin, Market, Church, Eighteenth, and Channel* streets and the *Water Front*, to wit: *No. 8729 Grant avenue*, thereby violating the provisions of section 33, order No. 1587, of the *Board of Supervisors of said City and County of San Francisco*. contrary, etc., [as in No. 335].

(Subscribed and sworn to.)

**No. 364.—Complaint—Lottery Tickets in Possession.**

[TITLE OF COURT AND CAUSE.]

STATE OF California, }  
 City and County of San Francisco. } ss.

Now comes *J. W.*, who, being duly sworn, deposes and says, that on the *fourth day of May, 1894*, in the *City and County of San Francisco, State of California*, *W. S.* (whose real name is unknown to this complainant), did then and there willfully and unlawfully have in his possession a certain ticket, certificate, paper, and instrument, purporting, representing, and understood to be and to represent a ticket, chance, share, and interest in and depending upon the event of a lottery, and that said possession was not innocent, and was not for a lawful purpose; said ticket was *No. 97,673*, and was issued by the *Alameda Lottery Company*; thereby violating the provisions of section 3972, order No. 8746, of the *Board of Supervisors of said City and County of San Francisco*, as amended by order No. 9765 of said Board, contrary, etc., [as in No. 335].

(Subscribed and sworn to.)

**No. 365.—Complaint—Keeping Office for Sale of Lottery Tickets.**

[TITLE OF COURT AND CAUSE.]

STATE OF California, }  
 City and County of San Francisco. } ss.

Personally appears before me this *twelfth day of January, A. D. 1894*, *J. J.*, who, on oath, makes complaint, and deposes and says: that on the *first day of January, A. D. 1894*, in the *City and County*

of *San Francisco*, State of *California*, the crime of misdemeanor was committed, to wit: by *P. B.* (whose real name is unknown to this complainant), who then and there did willfully and unlawfully open, set up, and keep at No. 3000 Grant avenue a certain office, room, and place there situate for the sale of tickets in a certain lottery, and for the registering of the numbers of tickets in said lottery, to wit: the tickets of the *Louisiana Lottery Company*, contrary, etc., [as in No. 335].

(Subscribed and sworn to.)

### No. 366.—Complaint—Cruelty to Animals.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
City and County of *San Francisco*. } ss.

Personally appears before me this *fourteenth* day of *July*, *A. D. 1894*, *W. C.*, who, on oath, makes complaint, and deposes and says, that on the *first* day of *July*, *A. D. 1894*, in the *City and County of San Francisco*, State of *California*, the crime of misdemeanor was committed, to wit: by *J. F.* (whose real name is unknown to this complainant), who then and there did willfully and unlawfully and cruelly torture and torment a certain animal, to wit: the said defendant beat on the head a horse attached to a wagon driven by the defendant on a public street, with an iron bar about one inch thick and four feet long, thereby causing said horse great pain, contrary, etc., [as in No. 335].

(Subscribed and sworn to.)

### No. 367.—Complaint—Vagrant—Against.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
City and County of *San Francisco*. } ss.

Personally appears before me, this *twenty-third* day of *June*, *A. D. 1894*, *J. G.*, who, on oath, makes complaint, and deposes and says, that on the *third* day of *June*, *A. D. 1894*, and from said *third* day of *June*, *A. D. 1894*, up to the time of the making of this complaint, in the *City and County of San Francisco*, State of *California*, the crime of misdemeanor was committed, to wit: by *J. C.* (whose real name is unknown to this deponent), who then and there and from said *third* day of *June*, *A. D. 1894*, up to the time of the making of this complaint, not being a *California Indian*, there unlawfully roamed and unlawfully has roamed about from place to place without any lawful business; willfully and unlawfully was, has been, and during said time continued to be, and still is, an idle and dissolute person, and an associate of known thieves, who wanders and roams, and has during said time wandered and roamed, about the streets of said city and county at late and unusual hours of the night; willfully and unlawfully was, has been, con-



*tinued to be, and still is, a lewd and dissolute person, who lives, and has during said time lived, in and about houses of ill-fame there situate, contrary, etc., [as in No. 335].*

(Subscribed and sworn to.)

### No. 368.—Complaint—Selling Liquors Without License.

[TITLE OF COURT AND CAUSE.]

STATE OF California, }  
City and County of San Francisco. } ss.

Personally appears before me this *twenty-ninth* day of *July*, A. D. 1894, *J. W.*, who, on oath, makes complaint, and deposes and says, that on the *fourth* of *July*, A. D. 1894, in the *City and County of San Francisco*, State of *California*, the crime of misdemeanor was committed, to wit: by *P. H.* (whose real name is unknown to this complainant), who then and there willfully and unlawfully did engage in carrying on, pursuing, and transacting the business, occupation, and employment of selling, and did sell, *spirituous liquors, malt liquors, and fermented liquors, and fermented wines, in less quantities than one quart, without taking out and procuring the license therefor prescribed and required by law,* all of which is contrary, etc., [as in No. 335].

(Subscribed and sworn to.)

### No. 369.—Complaint—Disturbing the Peace.

[TITLE OF COURT AND CAUSE.]

STATE OF California, }  
City and County of San Francisco. } ss.

Personally appears before me, this *twenty-fourth* day of *July*, A. D. 1894, *W. H.*, who, on oath, makes complaint, and deposes and says, that on the *second* day of *July*, A. D. 1894, in the *City and County of San Francisco*, State of *California*, the crime of misdemeanor was committed, to wit: by *J. D.* (whose real name is unknown to this complainant), who then and there did willfully, unlawfully, and maliciously *disturb the peace and quiet of the neighborhood of the southwest corner of Grant avenue and Dupont street, in said city and county, and the peace and quiet of W. H., then and there being, by then and there making loud and unusual noise, by tumultuous and offensive conduct, by threatening, traducing, quarreling, challenging to fight, and by fighting, contrary, etc., [as in No. 335].*

(Subscribed and sworn to.)

### No. 370.—Complaint—Violating Fire Ordinance.

[TITLE OF COURT AND CAUSE.]

STATE OF California, }  
City and County of San Francisco. } ss.

Personally appears before me, this *ninth* day of *May*, A. D. 1894, *J. S.*, who, on oath, makes complaint, and deposes and says

that on the *third day of May, A. D. 1894*, in the *City and County of San Francisco, State of California*, the crime of misdemeanor was committed, to wit: by *J. L.* (whose real name is unknown to this complainant), who then and there did willfully and unlawfully erect, build, and maintain, and cause to be erected, built, and maintained, *over and upon the roof of a certain building situate within the limits of said city and county, to wit: on 409 Evaline street, between Adeline and Caroline streets, public streets of and in said city and county, certain scaffolding, without first having obtained the written permission of the Board of Supervisors of said city and county so to do, stating fully for what purpose said scaffolding was to have been erected and used; thereby violating the provisions of section 2, order No. 1569, and section 69 of order No. 1587, of the Board of Supervisors of the City and County of San Francisco, contrary, etc., [as in No. 335].*  
 (Subscribed and sworn to.)

### No. 371.—Complaint—Malicious Mischief.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*, }  
*City and County of San Francisco.* } ss.

Personally appears before me, this *fourteenth day of August, A. D. 1894*, *J. E.*, who, on oath, makes complaint, and deposes and says: that on the *second day of August, A. D. 1894*, in the *City and County of San Francisco, State of California*, the crime of malicious mischief was committed, to wit: by *S. L.*, who then and there did willfully, unlawfully, and maliciously break and injure the *front door of house No. 7326 Grant avenue, the said house being then and there the property of said J. E., and to his (the said J. E.'s) damage in the sum of one hundred dollars, all of which is contrary, etc., [as in No. 335].*

(Subscribed and sworn to.)

### No. 372.—Complaint—Keeping Opium Resort.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*, }  
*City and County of San Francisco.* } ss.

Personally appears before me, this *twenty-fourth day of March, A. D. 1894*, *J. T.*, who, on oath, makes complaint, and deposes and says, that on the *fourteenth day of March, A. D. 1894*, in the *City and County of San Francisco, State of California*, the crime of misdemeanor was committed, to wit: by *Ah Lee* (whose real name is unknown to this complainant), who then and there did willfully and unlawfully keep and maintain a certain place, house, and room there situate, *where opium is smoked, and where persons assemble for the purpose of smoking opium and inhaling the fumes of opium, to wit: at No. 827 Grant avenue, thereby violating the*

provisions of section 61, order No. 1587, of the Board of Supervisors of said City and County of San Francisco, contrary to the form, force, and effect of the statute in such cases made and provided, and against the peace and dignity of the people of the State of California; and this complainant, upon oath, accuses the said *Ah Lee* of having committed said crime; and this complainant further alleges and deposes that the said accused was then and there arrested therefor in the actual commission of the said offense, and prays that the said accused may be brought before a magistrate, and dealt with according to law.

(Subscribed and sworn to.)

### No. 373.—Complaint—Visiting Opium Den.

[TITLE OF COURT AND CAUSE.]

STATE OF California, }  
City and County of San Francisco. } ss.

Personally appears before me this *ninth* day of *June*, A. D. 1894, *J. S.*, who, on oath, makes complaint, and deposes and says, that on the *second* day of *June*, A. D. 1894, in the *City and County of San Francisco*, State of California, the crime of misdemeanor was committed, to wit: by *J. W.* (whose real name is unknown to this complainant), who then and there did willfully and unlawfully become an inmate of and a visitor to a certain place, house, and room there situate, where opium is smoked, and where persons assemble for the purpose of smoking opium and inhaling the fumes of opium, to wit: at No. 827 Grant avenue, thereby violating the provisions of section 61, order No. 1587, of the Board of Supervisors of said City and County of San Francisco, contrary to the form, force, and effect of the statute in such cases made and provided, and against the peace and dignity of the People of the State of California; and this complainant, upon oath, accuses the said *J. W.* of having committed said crime; and this complainant further alleges and deposes that the said accused was then and there arrested therefor in the actual commission of the said offense, and prays that the said accused may be brought before a magistrate, and dealt with according to law.

(Subscribed and sworn to.)

### No. 374.—Complaint—Petit Larceny.

[TITLE OF COURT AND CAUSE.]

STATE OF California, }  
City and County of San Francisco. } ss.

Personally appears before me this *fourteenth* day of *May*, A. D. 1894, *J. D.*, who, on oath, makes complaint, and deposes and says, that on the *second* day of *May*, 1894, in the *City and County of San Francisco*, State of California, the crime of petit larceny was



committed, to wit: by *J. A.* (whose real name is unknown to this complainant), who then and there did unlawfully and feloniously steal, take, and carry away *one silver watch, No. 87,227, manufactured by the Judson Rolling Mill Company, Alameda County, of the value of forty dollars, and of the personal goods and property of J. D., all of which is contrary, etc., [as in No. 335].*  
 (Subscribed and sworn to.)

### No. 375.—Complaint—Idle and Dissolute Minor.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
*City and County of San Francisco.* } 83.

To the Honorable *P. G., Judge of the Police Judge's Court, of the City and County of San Francisco.*

Personally appears before me this *thirteenth day of July, A. D. 1894*, *J. G. and W. B.*, who being duly sworn, according to law, each for himself, and not one for the other, do, on oath, make application and complaint to said Judge, and do depose and say, that they are citizens of the State of *California*, and residents of the *City and County of San Francisco, State of California*; that one *J. B. is a minor child*; that said *minor child* is under the age of *eighteen years*, to wit: of the age of *fourteen years*; that said *minor child* is leading an idle and dissolute life in said *City and County of San Francisco, State of California*; that the parents, to wit: the father of said minor, *J. B.*, and the mother of said minor, *J. B.*, neglect and fail to exercise and do not exercise any salutary control over said *minor child*; and these deponents therefore pray that a warrant be issued for the arrest of said *minor child*, and that said *minor child* be brought before the Honorable *P. G., Judge of the Police Judge's Court, of the City and County of San Francisco*, and be dealt with according to law, and be sentenced and committed to the *Industrial School of the City and County of San Francisco.*

(Subscribed and sworn to.)

### No. 376.—Form — Complaint—Threats to Commit Offense.

[TITLE OF COURT AND CAUSE.]

*A. B. C.*, complaining of *S. D. E.*, says: That on the *first day of August, 1888*, at the Town of *Piacer ville*, in the County of *El Dorado, State of California*, *S. D. E.* threatened to kill this complainant, and at the said time and place exhibited a *shotgun loaded with powder and buckshot*, in a condition ready to fire, and said that he would shoot complainant as soon as he found him, and that he was then looking for him; that complainant believes that the said *S. D. E.* will carry said threat into execution as soon as he meets complainant.

Wherefore, complainant prays that a warrant may issue for

the arrest of said *S. D. E.*, and that he may be required to give security to keep the peace, as is by law required in such cases.

(Signed and sworn to.)

NOTE.—Cal. Pen. Code, secs. 701-706. This form can be used in all places where such proceedings are allowed by law.

### No. 377.—Complaint on Commitment.

IN THE JUSTICE'S COURT of *Antelope Township, County of Tehama, State of California.*

THE PEOPLE OF THE STATE OF *California*, to the Sheriff of the County of *Tehama*:

An order having been this day made by me, that *John Doe* be held to answer upon a charge of

[State briefly the nature of the offense.]

committed in said township and county, on or about the *fifth* day of *August, 1894*, you, the said Sheriff, are commanded to receive him, the said *John Doe*, into your custody, and detain him until he is legally discharged. And I hereby order that the said *John Doe* be admitted to bail in the sum of *five hundred* dollars.

(Dated and signed.)

NOTE.—Cal. Pen. Code, sec. 877. All the States and Territories of the Pacific Coast prescribe by statute a form of commitment. They are all embraced within the words of the California form.

### No. 378.—Complaint on Claim and Delivery of Personal Property—Civil Proceedings.

IN THE JUSTICE'S COURT of *American Township, in the County of Sacramento, State of California.*

*Ezra Hollis,*

Plaintiff,

vs.

*Nathan Styles,*

Defendant.

*Ezra Hollis*, the plaintiff in the above entitled action, complaining of *Nathan Styles*, the defendant in the said action, alleges:

That on the *fourth* day of *June, 1890*, at the *City and County of San Francisco*, said plaintiff was, and now is, the owner and entitled to the possession of the following described personal property, to wit:

[Description.]

That said personal property is of the value of *two hundred and fifty* dollars.

That said defendant, on the *fourth* day of *June, 1894*, at the County of *Sacramento*, without the plaintiff's consent, and wrongfully, came into the possession of said personal property, and still retains possession of the same, and he claims to be the owner of the same.

That before the commencement of this action, to wit: on the sixth day of June, 1894, at the place last aforesaid, the plaintiff demanded of the defendant the possession of said personal property, but to deliver the possession thereof the defendant refused and still refuses.

That the said defendant still unlawfully withholds and detains said property from the possession of the plaintiff, to his damage in the sum of two hundred and fifty dollars.

That the same has not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under an execution or an attachment against the property of the plaintiff. [Or if it has been so seized or attached, allege the fact; and aver that the said property is by law exempt from execution.]

Wherefore, the plaintiff demands judgment against the defendant for the recovery of the possession of said personal property, or for the sum of two hundred and fifty dollars, the value thereof, in case a delivery cannot be had, together with twenty dollars, damages, and for costs of suit.

NOTE.—The provisions of the Codes and Statutes relating to "claim and delivery of personal property," are substantially the same in a Justice's and Superior Court. For forms, see Superior Court. See Cal. C. C. P., sec. 870, and references in similar actions in Superior Courts.

### No. 379.—Complaint for Holding Over after Expiration of Term.

[TITLE OF COURT AND CAUSE.]

Francis Anderson, a resident of the County of Sierra, the plaintiff in the above entitled action, complaining of Henry Scammon, of the County of Sierra, the defendant in said action, alleges:

That on or about the third day of January, 1894, the said plaintiff, by a verbal lease made on or about the said day, at the County of Sierra, leased, demised, and let to the said defendant, H. Scammon, of the said County of Sierra, the premises situate, lying and being in the said County of Sierra, State of California, and described as follows, to wit: All that bank building on the northeast corner of San Francisco street and Marysville place.

To have and to hold the said premises to the defendant for the term of one month, from the third day of January, 1894, at the monthly rent of twenty-five dollars, payable on the third day of the month, in advance. That by virtue of said lease, said defendant went into possession of said premises, and he still continues to hold and occupy the same.

That the term for which said premises were demised, as aforesaid, has terminated, and that the said defendant holds over and continues in possession of said demised premises, without the permission of the said plaintiff, and contrary to the terms of said lease.

That the said plaintiff, since the expiration of the term for which said premises were demised as aforesaid, to wit: on the



*fourth day of February, 1894, made demand in writing of the said defendant to deliver up and surrender to plaintiff the possession of said premises.*

*That more than three days have elapsed since the making of such demand, and the defendant has refused and neglected, for the space of three days after such demand, to quit the possession of the said demised premises, and still does refuse.*

*That the monthly value of the rents and profits of the said premises is the sum of twenty-five dollars.*

*Wherefore, the said plaintiff prays judgment for the restitution of the said premises, and for damages for the rents and profits of said premises, and that such damages may be trebled as damages for the occupation and unlawful detention and holding over of the same, amounting to the sum of twenty-five dollars per month, besides costs of suit.*

### **No. 380.—Complaint—Holding Over after Rent Due.**

[TITLE OF COURT AND CAUSE.]

*David Farquharson, a resident of the County of Sierra, the plaintiff in the above entitled action, complaining of John Badman, of the County of Sierra, the defendant in said action, alleges:*

1. *That on or about the first day of January, 1894, the said plaintiff, by a verbal agreement and lease, made on or about the said day, at the City and County of San Francisco, leased, demised, and let to the said defendant, of the said City and County of San Francisco, the premises situate, lying, and being in the City and County of San Francisco, State of California, and described as follows, to wit:*

[Description.]

*To have and to hold the said premises to the defendant at the monthly rent of twenty dollars, payable monthly on the first day of each and every month thereafter, in advance, in gold coin of the United States.*

2. *That by virtue of said agreement and lease, so made as aforesaid, the defendant went into the possession and occupation of said demised premises, and still continues to hold the same, as tenant of said plaintiff.*

3. *That pursuant to the terms of said agreement and lease, there became and was due on the first day of June, 1894, from said defendant to said plaintiff, for the rent of said premises for one month, to wit: from the first day of May, 1894, to the first day of June, 1894, the sum of twenty dollars, gold coin of the United States, amounting to the sum of \$20.*

4. *That on a certain day, to wit: the third day of June, 1894, at said city and county, demand in writing was duly made by said plaintiff of said defendant, for, and requiring the payment of, said rent then due, amounting to the said sum of twenty dollars, or*

*the possession of the said demised property, but said defendant neglected and refused, for the space of three days, after demand so made as aforesaid, and still neglects and refuses, to pay said rent, or surrender possession of said premises.*

5. *The said defendant unlawfully holds over and continues in the possession of said premises after default in the payment of the rent, pursuant to the lease and agreement under which said property is held, and without the permission of the plaintiff; by reason whereof the plaintiff has already sustained damages in the sum of twenty dollars, gold coin of the United States, for the rent of said premises actually accrued from the first day of May, 1894, to the first day of June, 1894.*

Wherefore, said plaintiff prays judgment against said defendant for the restitution and possession of said premises, and for the sum of twenty dollars, the amount now due and unpaid for the rent thereof, and such further sum as may accrue from the time of filing this complaint to the rendition of judgment herein; and that the amount found due for rent may be trebled and made payable in the gold coin of the United States, and also for the costs of this suit, and that by said judgment it be declared that said lease (or agreement) under which said defendant holds shall be forfeited.

NOTE.—In California and elsewhere on the Pacific Coast, the proceedings in this class of cases are the same, substantially, in a Justice's as in a Superior Court. The only material difference is in the amount of rent due under the terms of the tenancy. See the citations under similar forms in the Superior Courts.

### **No. 381.—Controversy—Submission of Without Action.**

[TITLE OF COURT AND CAUSE.]

It is stipulated between the parties hereto as follows:

A. B., the plaintiff, was, on the first day of May, 1894, a real estate agent. At the same time C. D. the defendant, owned a tract of land in said county and township; that both plaintiff and defendant reside in said township; that on said day it was verbally agreed between plaintiff and defendant that if plaintiff within three months would find a purchaser who would pay ten thousand dollars for said land, that defendant, on demand, would pay plaintiff two hundred and fifty dollars; that on the third day of June, 1894, plaintiff found a purchaser, to whom defendant, on June 10, 1894, granted said land for ten thousand dollars; that on the tenth day of said month of June plaintiff demanded of defendant two hundred and fifty dollars, which defendant refused to pay, and never has paid. It is further stipulated that this controversy shall be, and the same is, hereby submitted for judgment without further testimony.

(Dated, and signed by the parties.)

STATE of California,        }  
County of Lake.        } ss.

A. B. and C. D., being each duly sworn, says each for himself, and not one for the other, that the statements contained in the

foregoing stipulation are true, and occurred precisely as therein stated; that this proceeding is instituted in good faith to determine the rights of said parties.

(Subscribed and sworn to).

Indorsed: Filed, etc.

### No. 382.—Directions to Sheriff.

[TITLE OF COURT AND CAUSE.]

To *C. B., Esq., Constable Bush Street Township, Alameda:*

By authority of the writ of attachment issued in the above entitled action, you will please attach and safely keep all of the following described property:

[Description.]

And you are hereby notified that *S. K., Esq.*, has in his possession the following described property belonging to defendant:

[Description.]

Yours,

*G. S. & H.,*  
Attorneys for Plaintiff.

### No. 383.—Execution for Fees.

IN JUSTICE'S COURT of the *Second Township*, in the County of *San Mateo*, State of *California*.

The People of the State of *California*, to the Sheriff or any Constable of said County, Greeting:

Whereas, a judgment was rendered by *H. J. Wells, the undersigned*, a Justice of the Peace of the said Township, County of *San Mateo*, on the *first day of May, 1894*, against *John Smith*, in the action of *John Smith v. Samuel Brown*, for costs; and whereas the sum of *twenty* dollars is due the undersigned from the said *John Smith, plaintiff*, for his fees in said action due as by law provided:

These are therefore to command you, the said Sheriff, that out of the personal property, and if sufficient personal property cannot be found, then out of the real property of said *John Smith*, you levy and cause to be made by sale, the said amount of *twenty* dollars, fees due as aforesaid, together with any costs that may accrue; and of this writ make legal service and due return within sixty days after your receipt hereof, with what you have done indorsed hereon.

Given under my hand this *third day of May, 1894*.

*H. J. WELLS,*  
Justice of the Peace of said Township.



## No. 384.—Execution.

IN THE JUSTICE'S COURT of *East Bear Township*, in the County of *Yuba*, State of *California*.

The People of the State of *California*, to the Sheriff or any Constable of the County of *Yuba*, Greeting:

## JUDGMENT.—

Judgment.....\$150 00

Costs..... 11 00

\$161 00

## ACCRUING COSTS.—

Execution and Filing..... 0 50

Levy ..... 2 00

Advertisement..... 1 00

Keeping ..... ..

\$164 50

Whereas, a judgment was rendered before me, *Asa Gould*, a Justice of the Peace of *East Bear Township*, in said County of *Yuba*, on the first day of *August, 1894*, against *John Doe*, defendant, and in favor of *Richard Roe*, plaintiff, for the sum of *one hundred and fifty dollars* damages, and *eleven dollars* costs of suit, which said judgment was made payable in gold coin of the United States.

These are, therefore, to command you, that out of the personal property, and if sufficient personal property cannot be found, then out of the real property of said *John Doe*, you levy and cause to be made by sale, in gold coin of the United States, the said amount of *one hundred and fifty dollars* damages, and *eleven dollars* costs of suit, together with any costs that may accrue, and of this writ make legal service and due return within *sixty days* after your receipt thereof.

Given under my hand, this *eighth day of August, 1894*.

ASA GOULD,

Justice of the Peace of said Township.

NOTE.—California. C. C. P., sec. 902, and the same substantially at all other places.

## No. 385.—Judgment on Confession—Money Received.

[TITLE OF COURT AND CAUSE.]

I, *C. D.*, defendant above named, do hereby confess judgment in this case in favor of said plaintiff, *A. B.*, for the sum of *two hundred and ninety-nine dollars* and *ninety-nine cents*, and I hereby authorize the said Justices of the Peace to enter judgment therein therefor against me for said sum, together with the costs of entering the same, with legal interest thereon from date.

This confession of judgment is for a debt now justly due and owing to the said plaintiff, arising from the following facts, to wit: *Money had and received by me at said City and County of San Francisco, of the said plaintiff, for my use and benefit, at my special instance and request, at various times, between the 3d of June, 1886, and the ninth day of January, 1888, amounting to said sum of two hundred and ninety-nine dollars and ninety-nine cents. No part of said money has been repaid said A. B., nor has he any offset to the same, or any part thereof.*

*C. D.*

STATE OF California, } ss.  
 City and County of San Francisco. }

C. D., the defendant above named, being duly sworn, deposes and says, that the foregoing statement is true of his own knowledge.

(Dated, signed, and sworn to.)

### No. 386.—Judgment of Imprisonment by the Court.

IN THE JUSTICE'S COURT of Pulgas Township, in the County of San Mateo, State of California.

The People of the State of California, }  
 Plaintiffs, }  
 against }  
 Robert Roe, }  
 Defendant. }

A complaint, under oath, having been filed in this Court on the *sixteenth* day of *July, 1894*, charging said defendant, *Robert Roe*, of certain public offenses, to wit: Battery upon the person of *John Doe*, a misdemeanor, committed on the *thirteenth* day of *July, 1894*, and a warrant of arrest having been duly issued on said *sixteenth* day of *July, 1894*, for the arrest of said defendant, and said defendant, *Robert Roe*, having been duly arrested, and thereafter, on the *seventeenth* day of *July, 1894*, tried before this Court, without a jury; a jury trial having been waived, as provided by law in such cases, and by the Court found guilty, as charged in the complaint; and all and singular, the law and the premises being by the Court here understood and fully considered, and no sufficient cause appearing to the Court why judgment should not be pronounced against said *Robert Roe*.

Wherefore, it is by the Court here ordered and adjudged that for said offense you, the said *Robert Roe*, be imprisoned in the county jail of said County of San Mateo, for the term of five months and fifteen days, or that for said offense you, the said *Robert Roe*, be fined one hundred dollars [and be imprisoned until the said fine is satisfied, in the proportion of one day's imprisonment for every dollar of said fine].

[The words in brackets to be inserted if both fine and imprisonment may be inflicted.]

Done in open Court, this *twentieth* day of *July, 1894*.

GEO. W. FOX,

Justice of the Peace of the County of San Mateo.

OFFICE OF JUSTICE OF THE PEACE, } ss.  
 Pulgas Township, County of San Mateo. }

I, *George W. Fox*, Justice of the Peace of the County of San Mateo, do hereby certify the foregoing to be a full, true, and correct copy of the judgment duly made and entered on the minutes of the said Justice's Court in the above entitled action, on the *nineteenth* day of *July, 1894*.

Attest my hand, at the Township of *Pulgas*, in the County of *San Mateo*, this *twentieth* day of *July*, 1894.

GEO. W. FOX,  
Justice of the Peace in and for said County.

NOTE 1.—In California when the defendant pleads guilty, or is convicted, the Court renders judgment of fine or imprisonment, or both. A judgment of fine may also direct that he be imprisoned until the fine is satisfied. Pen. Code, secs. 1445-6.

NOTE 2.—In Nevada, Gen. Stats., sec. 4493.

NOTE 3.—In Idaho, Rev. Stats., sec. 8299.

NOTE 4.—In Montana, P. C., secs. 2221, 2705-6.

NOTE 5.—In Utah, Comp. Stats., sec. 4344.

NOTE 6.—In North and South Dakotas, Comp. Laws, sec. 6163.

NOTE 7.—In Wyoming, Rev. Stats., sec. 3645.

NOTE 8.—In Washington, Hill's Codes, sec. 1531.

NOTE 9.—In Arizona, Hill's Laws, sec. 2141.

NOTE 10.—In Colorado, Mills' Stats., secs. 2767-8.

NOTE 11.—In Arizona, Rev. Stats., sec. 1832.

### No. 387.—Judgment of Fine and Imprisonment.

[TITLE OF COURT AND CAUSE.]

IN THE JUSTICE'S COURT of *Buckeye* Township, in the County of *Yolo*, State of *California*.

[Title of Court, and continue the same as Form No. 386, down to "Wherefore."]

Wherefore, it is by the Court here ordered and adjudged that for said offense you, the said *Robert Roe*, do pay a fine in the sum of *fifty* dollars, and be imprisoned in the County Jail of said *San Mateo* County until the said fine be paid, not exceeding *twenty-five* days.

Done in open Court, etc.

### No. 388.—Juror—Summons of.

JUSTICE'S COURT, *Butte Creek* Township, County of *Colusa*, State of *California*.

C. KOPF, Justice of the Peace.

To Mr. *George W. Ware*: You are hereby notified and required to attend before *C. Kopf*, one of the Justices of the Peace of *Butte Creek* Township, on the *third* day of *April*, 1894, at *nine* o'clock A. M., at the Court-room of said Justice of the Peace in said township, in the County of *Colusa*, then and there to serve as a juror. By order of *C. Kopf*, Esq., Justice of the Peace

Herein fail not, under the penalty of the law.

PETER ANDERSON,

(Dated.)

Constable.

NOTE.—Cal. C. C.P., sec. 230. In all States the form of notice (summons) to a person to appear and serve as a juror is substantially the same.



**No. 389.—Memorandum of Costs and Disbursements.**

IN THE JUSTICE'S COURT of *River Township*, in the County of *Placer*, State of *California*.

W. Walsh,  
Plaintiff,  
v.  
M. O'Connor,  
Defendant. }

**DISBURSEMENTS.**

Constable's Fees, <i>serving process</i> .....	\$ 2 00
Justice's Fees.....	5 00
Jurors' Fees, <i>one day</i> .....	24 00
Witnesses' Fees, <i>as follows</i> :	
<i>John Smith, one day</i> .....	2 00
<i>Robert Jones, one day</i> .....	2 00
<i>James Riley, one day</i> .....	2 00
Total.....	\$37 00

NOTE.—It is unnecessary to file a bill of costs in proceedings in a Justice's Court. When lawyers appear in these courts they sometimes file them. It is good practice to do so. The Justice is furnished with written memoranda of the prevailing party's disbursements. In the Superior Courts it is usually necessary to file and verify a cost bill. See Superior Courts.

**No. 390.—Notice of Time and Place of Trial of Action.**

IN THE JUSTICE'S COURT of the *First Township*, in the *City and County of Sacramento*, State of *California*.

Philip Monroe,  
Plaintiff,  
v.  
Marcus Paul,  
Defendant. }

To *Philip Monroe*, the plaintiff, in the above entitled action, and  
*Marcus Paul*, the defendant in said action:

You will please take notice, that the said action [*if transferred so state*], is set for trial before me, at my office in said *First Township*, in said city and county, on *Monday*, the *eighth* day of *August*, 1894, at *three o'clock P. M.*

ROBERT J. TOBIN,

Justice of the Peace of said *First Township*.

Dated *August 5*, 1894.

**INDORSEMENT.**

I hereby certify that I have served the foregoing notice, by delivering a true copy thereof to *Philip Monroe* and *Marcus Paul*, the persons named therein, personally, at the *City and County of San Francisco*, this *sixth* day of *August*, 1894.

JOSHUA HILTON,

Fees, \$2.00.

Constable.

NOTE 1.—In California, when some of the parties have appeared, and the remaining made default, the Justice fixes a day for the trial, and notifies those who have appeared. Notice does not mean summons; it means additional notice by mail, or by personal service of a written or printed "notice." Also, when a case has been transferred, notice of the time set for trial must be given. C. C. P., sec. 850.

NOTE 2.—In Nevada, when a case is transferred from another Court, it is necessary to give notice of the time set for trial. Gen. Stats., sec. 3562.

NOTE 3.—In Idaho the same as in Nevada. Rev. Stats., sec. 4643.

NOTE 4.—In Utah notice is unnecessary, but the practice is to give it.

NOTE 5.—In Montana the same as in Utah.

NOTE 6.—In Wyoming the same as in Nevada. Rev. Stats., secs. 8446-7.

NOTE 7.—In Washington the same as in Utah.

NOTE 8.—In Oregon the same as in Washington.

NOTE 9.—In Colorado the same as in Washington.

NOTE 10.—In Arizona the same as in Utah.

NOTE 11.—In Montana the same as in California. C. C. P., sec. 1511.

### No. 391.—Notice of Appeal.

[TITLE OF COURT AND CAUSE.]

You will please take notice, that the *defendant* in the above entitled action hereby *appeals* to the Superior Court of the County of *Sacramento*, from the judgment therein made and entered in the said Justice's Court, on the *first* day of *August*, 1894, in favor of said *plaintiff* and against said *defendant*, and from the whole thereof. This appeal is taken on *questions of both law and fact*; or [*This appeal is taken on questions of law; or this appeal is taken from that part of the judgment awarding defendant costs*].

Yours, etc.,

A. SOLON HOLL,

Attorney for Defendant and Appellant.

(Dated.)

To the Justice of said Justice's Court, and *J. N. Young, Esq.*, Attorney for Respondent.

Service of a copy of the within notice of appeal is hereby admitted, after filing, this *second* day of *August*, 1894.

J. N. YOUNG,

Attorney for Respondent.

NOTE 1.—In California, a party dissatisfied with the judgment of a Police or Justice's Court may appeal to the Superior Court. The appeal is taken by filing a notice of appeal and serving a copy on the other party. The notice must state whether the appeal is from the whole or part of the judgment, and if from a part, stating what part, and whether taken on questions of law or fact, or both. C. C. P., sec. 974.

NOTE 2.—In Nevada it is unnecessary to give, in the notice, reasons for the appeal. Gen. Stats., sec. 8603.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 4838.

NOTE 4.—In Montana the same as in Nevada. C. C. P., sec. 1760.

NOTE 5.—In Utah the same as in Nevada. Comp. Laws, sec. 3657.

NOTE 6.—In North and South Dakotas the same as in California. Comp. Laws, sec. 6129.

NOTE 7.—In Wyoming a special notice is not necessary. Appeals are taken by bill of exceptions, and that is sufficient notice. Rev. Stats., sec. 3486.

NOTE 8.—In Washington the same as in Nevada. Hill's Stats., sec. 1631.

NOTE 9.—In Oregon the same as in Nevada. Hill's Laws, sec. 2119; Laws of 1893, p. 33.

NOTE 10.—In Colorado no notice is necessary. Mills' Stats., sec. 2679.

NOTE 11.—In Arizona notice of appeal may be given, usually in open Court. If no so given, notice in writing must be given, the same as in Nevada. Rev. Stats., sec. 145.

**No. 392.—Notice to Officer of Laborer's Claim.**

[TITLE OF COURT AND CAUSE.]

To *H. W., Esq.*, [Sheriff or Constable]:

You will please take notice, that within *sixty days next* preceding the date of the levy by you of the writ of attachment against the property of said defendant in this action, *I rendered labor as a miner for said defendant, and there is due me from him for said labor the sum of one hundred dollars*; and you are hereby directed to withhold said amount from the proceeds of said property attached, and to pay the same to me on said labor account.

(Subscribed and sworn to.)

**No. 393.—Notice to Creditor or Defendant of Laborer's Claim.**

[TITLE OF COURT AND CAUSE.]

To *W. S., Esq.*, Defendant [or to the plaintiff creditor]:

You will please take notice, that *J. W.* has presented a claim, under oath, for *one hundred dollars, which he claims is due to him from the defendant herein for labor as a miner, within sixty days next* preceding the levy of the attachment writ herein.

(Dated.)

*H. W.*, Constable.**No. 394.—Notice to Officer—Laborer's Claim Disputed by Creditor.**

[TITLE OF COURT AND CAUSE.]

To *H. W., Esq.*, [Sheriff or Constable]:

You will please take notice, that I dispute the entire claim made by *J. W., Esq.*, for *one hundred dollars*, for labor claimed to have been performed by him for the defendant *as a miner*, in this action, within *sixty days next* preceding the date of the levy by you of the writ of attachment herein. No part of said claim is justly due from the defendant to the claimant.

*S. P.*, Plaintiff.

(Dated and sworn to.)

**No. 395.—Notice to Officer—Laborer's Claim Disputed by Defendant.**

[TITLE OF COURT AND CAUSE.]

To *H. W., Esq.*, [Sheriff or Constable]:

You will please take notice, that I dispute the entire claim made by *J. W., Esq.*, for *one hundred dollars*, for labor claimed to have been performed by him for me *as a miner*; you are notified that I am not indebted to him to the value of anything on account of labor performed within *sixty days next* preceding the date of the levy by you of the writ of attachment herein. No part of said claim is justly due from me to said claimant.

(Dated and sworn to.)

*W. S.*, Defendant.



**No. 396.—Notice to Claimant that Claim is Disputed.**

[TITLE OF COURT AND CAUSE.]

To *J. W., Esq.:*

You are hereby notified, that the defendant [or plaintiff] herein disputes the validity of your claim for *one hundred* dollars, notice of which you have heretofore served me with; and unless you commence action to test the validity of your claim, and prosecute the same with reasonable diligence, within *ten* days from the date hereof, it will be barred as a preferred claim, under the writ of attachment [or execution] herein.

*H. W., Constable.*

(Dated.)

**No. 397.—Notice to Plaintiff of Arrest.**

[TITLE OF COURT AND CAUSE.]

You will please take notice, that I have, in obedience to the order indorsed on the summons in this action, arrested the defendant, and he is now in my custody.

(Signed and dated.)

Indorsed: Service of the within notice admitted this *third* day of *July*, 1894.

*A. B., Attorney for Plaintiff.*

[Or by the plaintiff, if he has not appeared by attorney.]

**No. 398.—Notice that Case is Set for Trial.**

[TITLE OF COURT AND CAUSE.]

You will please take notice, that the above entitled action has been set for trial before me, at my office, at *Mud Flat*, Yuba County, at *9 A. M.*, of *January 9*, 1894.

(Signed and dated.)

Indorsed: Service of the within is admitted this *seventh* day of *January*, 1894, [and signed].

**No. 399.—Notice that Case has been Transferred.**

[TITLE OF COURT AND CAUSE.]

You will please take notice, that the above entitled case was, on the *first* day of *April*, 1894, by *S. C., Esq.*, Justice of the Peace of *B. Township*, County of *C.*, transferred to my Court for trial; and you are notified that the said case has been set for trial, and will be tried before me, at my office, at *H. Township*, in the Town of *S.*, in said county, on *Monday, April 6*, 1894, at the hour of *10* o'clock *A. M.*

*J. H., J. P.*(Dated *March 27*, 1894.)**No. 400.—Notice to Plaintiff of Adverse Claim.**

[TITLE OF COURT AND CAUSE.]

You will please take notice, that defendant will, on the *third* day of *April*, *A. D.* 1894, at the office of *E. R., Esq.*, Justice of the

Peace, at the Town of *C.*, County of *M.*, at the hour of *ten o'clock A. M.* of that day, apply to said Justice of the Peace for an order substituting *H. N.* as defendant in this action, in place of defendant, and discharging said defendant from liability in said action.

Said motion will be based on the *pleadings herein*, and the *affidavit of defendant*, a copy of which is served herewith, and will be made on the ground that defendant has *no interest in the result of said action, and that said H. N. is the real party in interest therein.*

*P. C. S.*

(Dated.)

*Att'y for Defendant J. N.,* for said motion.

#### **No. 401.—Notice of Motion to Set Aside Default Judgment.**

[TITLE OF COURT AND CAUSE.]

You will please take notice, that upon affidavit, a copy of which is herewith served, I will move said Court at its office in the Town of *Loyalton*, in *Valley Township*, County of *Sierra*, on the *seventh* day of *July, 1894*, at the hour of *10 o'clock A. M.* of said day, or as soon thereafter as counsel can be heard [or as soon thereafter as the defendant can be heard]; that the judgment entered by default against the said defendant, and all subsequent proceedings thereon, be set aside, upon the ground that *the summons herein was not personally served on the day stated in the return, but on the following day*, and defendant's time for answering had not elapsed when said judgment was entered [or any other ground within the statute.] The said motion will be based on the affidavit of the defendant herein.

(Signed and dated.)

#### **No. 402.—Notice that Case has been Transferred.**

[TITLE OF COURT AND CAUSE.]

You will please take notice, that the above entitled case was on the *first* day of *April, 1894*, by *S. C., Esq.*, Justice of the Peace of *B. Township*, County of *C.*, transferred to my Court for trial, and you are notified that the said case has been set for trial and will be tried before me, at my office, at *H. Township*, in the Town of *S.*, in said county, on *Monday, April 6, 1894*, at the hour of *10 o'clock A. M.*

*J. H., J. P.*

(Dated.)

#### **No. 403.—Notice of Decision.**

[TITLE OF COURT AND CAUSE.]

You will please take notice, that the defendant's demurrer to the complaint herein has been sustained, and you are given two days in which to amend.

(Dated and signed.)

[On the back of all notices is usually indorsed: "Service of the within admitted this *third* day of *January, 1894.*" Signed.]

**No. 404.—Notice to Constable that Defendant Excepts to the Sufficiency of Plaintiff's Sureties.**

[TITLE OF COURT AND CAUSE.]

*Edward Irwin, Esq.*, Constable: You will please take notice that the defendant in this action hereby excepts to the sufficiency of the sureties upon plaintiff's undertaking filed herein.

(Dated.) *NATHANIEL BROWN*, Defendant.

Indorsed: Service admitted.

*EDWARD IRVIN*, Constable.

**No. 405.—Notice to Defendant that his Sureties shall Justify.**

[TITLE OF COURT AND CAUSE.]

You will please take notice, that the defendant's sureties on his undertaking herein, on release from arrest, will be required to justify.

(Dated and signed by the plaintiff or his attorney, and served on the defendant or his attorney, if he has one.)

**No. 406.—Notice to Plaintiff of Justification.**

[TITLE OF COURT AND CAUSE.]

You will please take notice, that defendant's sureties on his undertaking, given on his release from arrest herein, will justify before *A. B. C., Esq.*, the Justice who issued the said order of arrest, at his office in the Town of *Downieville*, on *Monday, August 2, 1894*, at *2 o'clock, P. M.*

(Dated and signed, and served on the plaintiff or his attorney.)

**No. 407.—Notice of Application for Discharge.**

[TITLE OF COURT AND CAUSE.]

You will please take notice, that on *Friday*, the *tenth* day of *August, A. D. 1894*, at the hour of *ten o'clock, A. M.*, or as soon thereafter as the matter can be heard, I will apply to the Honorable *John Hunt*, Judge of the Superior Court of the *City and County of San Francisco*, at the court room of his said Court in the *New City Hall*, in said city and county, for an order to be discharged from imprisonment in the County Jail of said city and county, where I am confined as a prisoner under civil process, issued out of the Justice's Court of said city and county, in an action in said Justice's Court entitled *A. B. C. D. vs. E. F. G. H.*

(Dated and signed by the prisoner, and addressed to and served on either the plaintiff in the Justice's Court, or his agent, or his attorney of record.)



**No. 408.—Order for Inspection.**

[TITLE OF COURT AND CAUSE.]

To *A. L. P.*, defendant [*or plaintiff*]: You will forthwith [*or at a time stated*] exhibit the original account set up in your answer to the plaintiff, and furnish him with a copy of the same. If this order *is not* obeyed, the said account cannot be given in evidence.  
(Signed and dated.)

**No. 409.—Order Allowing Intervention—Docket Order.**

[TITLE OF COURT AND CAUSE.]

The complaint of *P. K. N.* having been presented to me, and leave asked to file the same, as his complaint of intervention herein, and it appearing that good cause exists therefor, it is ordered that leave be granted to file the same, and that said *P. K. N.* be permitted to intervene in said action.  
(Dated and signed.)

**No. 410.—Order in Replevin—Washington.**

[TITLE OF COURT AND CAUSE.]

STATE OF *Washington*, }  
County of ———. } ss.

To the Sheriff or any Constable of said county:

In the name of the United States, you are hereby commanded to take the personal property mentioned and described in the within affidavit, and deliver the same to the plaintiff upon receiving a proper undertaking, unless before such delivery the defendant enter into sufficient undertaking for the delivery thereof to the plaintiff, if delivery be adjudged.

Given under my hand this *ninth* day of *May*, 1894.

*J. P.*, Justice of the Peace.

**No. 411.—Order for the Delivery of Property—Oregon.**

[TITLE OF COURT AND CAUSE.]

IN THE JUSTICE'S COURT for the Precinct of ———, State of *Oregon*,  
County of ———.

To the Sheriff of such county, or any Constable of any precinct therein, Greeting:

In the name of the State of *Oregon*, you are hereby commanded to take the personal property described and mentioned in the within affidavit, and deliver the same to the above named plaintiff, unless before such delivery, and within the time allowed by law, the above named defendant enter into a sufficient undertaking for the delivery thereof to the plaintiff, if delivery be adjudged in the action, and for the payment of such sum as may be recov-

ered against the defendant, and of this order make legal service and due return to me.

(Given under my hand, *etc.*)

### No. 412.—Order of Examination of Party.

IN THE JUSTICE'S COURT of the *Second Township*, in the County of *Nevada*, State of *California*.

*John Thompson*,  
Plaintiff,

v.  
*George H. McConnell*,  
Defendant.

The People of the State of *California*, to *George H. McConnell*,  
Greeting:

Whereas, it has been alleged and duly made to appear to the undersigned, one of the Justices of the Peace of said township, by the affidavit of plaintiff, that an execution has been duly issued out of this Court against property of yours, the said defendant in the above entitled action, and is still in force and remains unsatisfied; and that you have in your possession or under your control certain debts, moneys, effects, credits, and other property, which you unjustly refuse to apply toward the satisfaction of said judgment.

You are therefore commanded to be and appear before me (*or before John Brown, Esq., who is appointed referee for the purpose of said examination*), at my office, in said *Second Township*, in said *Nevada County*, on the *tenth day of September, 1894*, at *twelve o'clock M.*, then and there to be examined on oath, concerning the same.

Given under my hand, *etc.*

NOTE 1.—Cal. C. C. P., sec. 714. See same form in Superior Court, and notes.

NOTE 2.—In Nevada, Gen. Stats., sec. 3262.

NOTE 3.—In Idaho the same as in California. Rev. Stats., secs. 4504-7.

NOTE 4.—In Montana the same. C. C. P., secs. 1260-1272.

NOTE 5.—In Utah the same. Comp. Laws, sec. 3452.

NOTE 6.—In North and South Dakotas the same. Comp. Laws, sec. 5174.

NOTE 7.—In Wyoming the same. Rev. Stats., sec. 3546.

NOTE 8.—In Washington the same. Hill's Stats., sec. 524.

NOTE 9.—In Oregon the same. Hill's Laws, sec. 308.

NOTE 10.—In Colorado the same. Mills' Stats., sec. 222.

NOTE 11.—In Arizona, Rev. Stats., sec. 1943.

### No. 413.—Order of Examination of Debtor of Defendant.

[TITLE OF COURT AND CAUSE.]

The People of the State of *California*, to *Elnathan Perry*, Greeting:

Whereas, it has been alleged and made to appear to the undersigned, one of the Justices of the Peace of said township, by the affidavit of plaintiff, that an execution has been duly issued out

of this Court against the property of the defendant in the above entitled action, and is still in force, and that you have in your possession or under your control certain debts, moneys, effects, credits, and other property, owing to or belonging to the said defendant.

You are therefore commanded to be and appear before me (or before John Brown, Esq., who is appointed referee for the purpose of said examination), at my office, in said township, in said county, on the third day of August, 1894, at two o'clock P. M., then and there to be examined on oath concerning the same. And you are further commanded not to pay, transfer, return, or otherwise part with or dispose of any such debts, moneys, effects, credits, or other property, until duly released according to law.

Given under my hand, etc.

I hereby certify that I have served the within order by delivering a true copy thereof to Elnathan Perry, the person to whom the same is directed personally, this second day of August, 1894, at Bloomfield Township, in the County of Nevada.

SAMUEL SMITH,

Fees, \$1.50.

Constable.

NOTE.—This form is generally used in all places where the preceding form is used.

#### No. 414.—Order of Arrest by Sureties to Arresting Officer.

[TITLE OF COURT AND CAUSE.]

You will please take notice, that the undersigned, the sureties on the bail of defendant on his release from arrest, as appears from the undertaking, of which the within is a certified copy, command you to forthwith arrest the within named defendant and detain him in your custody until he is discharged by law.

(Dated and signed by the sureties.)

To A. L. T., Constable of Redwood Township, County of San Mateo [or to the Sheriff of the county].

#### No. 415.—Subpoena.

IN THE JUSTICE'S COURT of American Township, in the County of Sacramento, State of California.

David Francis,	}
Plaintiff,	
v.	
Jane Doe,	}
Defendant.	

The People of the State of California send greeting to H. H. Bancroft and W. H. Knight:

We command you, that you appear and attend before the undersigned, one of the Justices of the Peace of said Township, in



said *Sacramento County*, at his office, southeast corner of *Sixth and A streets, Sacramento*, on the *seventeenth day of May, 1894*, at one o'clock P. M., then and there to testify in the above entitled action, now pending before said Justice on the part of the defendant; and for a failure to attend, you will be deemed guilty of a contempt of Court, and liable to pay all losses and damages sustained thereby by the parties aggrieved, and forfeit one hundred dollars in addition thereto.

Given under my hand, *etc.*

NOTE 1.—If the subpoena is served by an officer the usual return is indorsed on it. If by a private person, then his affidavit of service is indorsed.

NOTE 2.—California. A Justice of the Peace may issue a subpoena to any part of the county. It must be issued without a blank left to be filled by another; otherwise, it is void. C. C. P., secs. 919, 920.

NOTE 3.—In Nevada the same. Gen. Stats., sec. 3410.

NOTE 4.—In Idaho the same. Rev. Stats., sec. 4771.

NOTE 5.—In Montana the same. By telegraph or telephone. C. C. P., secs. 1837, 3301.

NOTE 6.—In Utah the same. Comp. Laws, sec. 3-23.

NOTE 7.—In North and South Dakotas the same. Comp. Stats., sec. 4771.

NOTE 8.—In Wyoming the same. Rev. Stats., sec. 3449.

NOTE 9.—In Washington a form is presented by statute. The above form embraces all the requisites of the statute form. The statute permits the use of equivalent forms. Hill's Stats., sec. 1558.

NOTE 10.—In Oregon the same as in Washington. Hill's Laws, p. 1043.

NOTE 11.—In Colorado the same as in Washington. Mills' Stats., sec. 2652.

NOTE 12.—In Arizona the same as in California. Rev. Stats., sec. 1825.

### No. 416.—Subpoena—Criminal.

IN THE JUSTICE'S COURT of *Hot Springs Township*, in the County of *Napa*, State of *California*.

[TITLE OF COURT AND CAUSE.]

The People of the State of *California*, to *Smith Hawkins and Alvarez Joaquin*:

You are commanded to appear before *W. A. Haskin*, a Justice of the Peace of *Hot Springs Township*, in the County of *Napa*, at the office of said Justice, in said township, on the *third day of June, 1894*, at *ten o'clock A. M.*, as a witness in a criminal action, prosecuted by the People of the State of *California* against *Jack Sheppard*, on the part of the People. [If documents are wanted as evidence, add, and you are required, also, to bring with you the following—describing intelligibly the books, papers, or documents required.]

Given under my hand, this *second day of June, 1894*.

*W. A. HASKIN,*

Justice of the Peace of said Township.

### INDORSEMENT OF SERVICE.

I hereby certify that I have served the within subpoena by showing the within original to the within named *Smith Hawkins and Alvarez Joaquin* personally, and informing each one of them of the contents thereof, on or prior to the *third day of June, 1895*, at the County of *Napa*.

NOTE 1.—California. A Magistrate before whom a complaint is made, for witnesses in the State, may subpoena them. Penal Code, 1326. The form of subpoena is given by statute. *Id.*, sec. 1327.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 1420.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 8313.

NOTE 4.—In Montana the same. P. C., secs. 1594, 2721.

NOTE 5.—In Utah the same. Comp. Laws, sec. 3923.

NOTE 6.—In North and South Dakotas the same. Comp. Laws, sec. 7351.

NOTE 7.—In Wyoming the same. Rev. Stats., sec. 3449.

NOTE 8.—In Washington the same. Hill's Stat., sec. 1553.

NOTE 9.—In Oregon the same. Hill's Laws, p. 1043.

NOTE 10.—In Colorado the same. Mills' Stat., sec. 2652.

NOTE 11.—In Arizona the same. Rev. Stats., sec. 2049.

### No. 417.—Summons—General.

IN THE JUSTICE'S COURT, *Gilroy Township.*

*John Brown,* }  
v. }  
*Henry Smith.* }

The People of the State of *California* send greeting to *Henry Stubbs*, defendant:

You are hereby required to appear in an action brought against you by the above named plaintiff, in the Justice's Court of *Gilroy Township*, County of *Santa Clara*, State of *California*, and to answer before the Justice, at his office in the said township, the complaint filed therein, within *five days* (exclusive of the day of service) after the service on you of this summons, if served within the township in which this action is brought; or, if served out of said township, but in said county, within *ten days*; or within *twenty days*, if served elsewhere.

The said action is brought to obtain judgment against you to recover the sum of \$283, for work and labor alleged to have been performed by plaintiff for you on your farm in said county, as a herder of stock, between the first day of *January, 1894*, and the third day of *May, 1894*, and costs of suit [or any other cause of action on contract], as more fully appears by the complaint on file herein, to which you are referred.

And you are hereby notified that if you fail to so appear and answer said complaint, as above required, said plaintiff will take judgment against you for the sum of \$283, together with costs.

Make legal service and due return hereof.

Given under my hand this *seventh* day of *June, 1894*.

A. R. SPENCER,

Justice of the Peace of said Township.

JOHN L. JONES,

Attorney for Plaintiff.

**No. 418.—Summons—Order of Arrest on.**

[To be indorsed on the summons, if the defendant is subject to arrest in the action.]

STATE OF *California*, }  
County of *Napa*. } ss.

The People of the State of *California*, to the Sheriff or any Constable of the County of *Napa*:

You are hereby commanded to arrest the within named defendant, *John C. Wilson*, and bring him before me forthwith, to answer the plaintiff's complaint in this action.

Given under my hand, this *third* day of *June*, 1894.

JOHN LONG,

Justice of the Peace, *Napa* Township,  
*Napa* County, *California*.

NOTE 1.—The summons is directed to the defendant, and signed by the Justice, and contains:

1. The title of the Court, name of the county, and city or township in which the action is commenced, and the names of the parties.

2. A statement of the cause of action, in general terms.

3. A direction that the defendant appear and answer before the Justice, at his office, at a time stated.

4. In an action arising on a contract for the recovery of money or damages only, a notice that unless the defendant so appear and answer, the plaintiff will take judgment for the sum claimed by him [stating it].

5. In other actions, a notice that unless defendant so appear and answer, the plaintiff will apply to the Court for the relief demanded. If the plaintiff has appeared by attorney, the name of the attorney must be indorsed upon the summons.

Cal. C. C. P., sec. 844.

NOTE 2.—In Nevada the same form, but the time for appearance is different. Gen. Stats., sec. 8538.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 4655.

NOTE 4.—In Montana the same as in California, except it is returnable not less than four nor more than ten days from its date. It must be served at least four days before the time for appearance.

NOTE 5.—In Utah the same as in Nevada. Comp. Laws, sec. 3566.

NOTE 6.—In North and South Dakotas the same as in California. Comp. Laws, sec. 6072.

NOTE 7.—In Wyoming the same as in Nevada. Rev. Stats., sec. 3424.

NOTE 8.—In Washington as in second form following.

NOTE 9.—In Oregon. See next form.

NOTE 10.—In Colorado. See third form following.

NOTE 11.—In Arizona the same as in Nevada. Rev. Stats., sec. 693.

**No. 419.—Summons—Oregon.**

[It may be directed to a Sheriff or Constable, at the election of the Justice.]

[TITLE OF COURT AND CAUSE.]

To the Constable of *M.* Precinct, in *N.* County, State of *Oregon*:

In the name of the State of *Oregon*, we command you to summon one *C. D.* to appear before the undersigned, a Justice of the Peace in *M.* Precinct, in said county and State, on the *8th* day of *May*, 1894, at the hour of 9 o'clock, in the forenoon of said day, at *W.*, in the said precinct, to answer the complaint of *E. F.*, founded upon an instrument of writing [or note, or account, and



[or] for trespass or injury to property, or any similar statement, as the case may be], and wherein he demands \$50.

Given under my hand, this *seventh* day of May, 1894.

A. B., Justice.

NOTE.—Hill's Laws, p. 1042; Stats. 1893, p. 39.

### No. 420.—Summons—Washington.

[TITLE OF COURT AND CAUSE.]

State of *Washington*,  
                     \_\_\_\_\_ County. } ss.

To the Sheriff or any Constable of said county:

In the name of the *United States*, you are hereby commanded to summon A. B., if he [or they] be found in your county, to be and appear before me, at P., on the *second* day of *May*, at 10 o'clock P. M. [or A. M.], to answer the complaint of C. D., for the failure to pay him a certain demand, amounting to \$5.50, upon [here briefly state the nature of the claim], and of this writ make due service and return.

Given under my hand, this *fifth* day of *April*, 1894.

J. H., Justice of the Peace.

NOTE.—Laws of 1893, p. 264.

### No. 421.—Summons—Colorado.

[TITLE OF COURT AND CAUSE.]

State of *Colorado*,  
                     \_\_\_\_\_ County. } ss.

The People of the State of *Colorado*, to any Constable of said county, Greeting:

You are hereby commanded to summon A. B. to appear before me, at M., on the *second* day of *June*, at 10 o'clock, to answer the complaint of C. D., for the failure to pay him a certain demand, not exceeding \$300, and hereof make due return, as the law directs.

Given under my hand and seal, this *ninth* day of *May*, 1894.

C. H., J. P. [L. S.]

NOTE.—Mills' Stats., sec. 263.

### No. 422.—Summons—Foreclosure of Chattel Mortgage.

[TITLE OF COURT AND CAUSE.]

The People of the State of California send Greeting to *John S. Reis*, defendant:

You are hereby required to appear in an action brought against you by the above named plaintiff, in the Justice's Court of *Nevada* Township, County of *Nevada*, State of *California*, and to answer before said Justice, at his office in the said township, the com-

plaint filed therein, within *five* days (exclusive of the day of service) after the service on you of this summons, if served within the township in which this action is brought; or if served out of said township, but in said county, within *ten* days; or within *twenty* days, if served elsewhere.

The said action is brought to obtain a decree of this Court for the foreclosure of a certain mortgage described in the said complaint, and executed by the said defendant to plaintiff on the 28th day of June, 1894, to secure the payment of a certain promissory note for \$250, executed by you to plaintiff on the 28th day of June, 1894, with interest at ten per cent. per month from date until paid, and secured by a chattel mortgage of a Babcock steam boiler; that the said boiler may be sold, and the proceeds applied to the payment of said promissory note, interest, and costs, and in case such proceeds are not sufficient to pay the same, then to obtain an execution against said *John S. Reis*, defendant, for the balance remaining due, and also that the said defendant and all persons claiming by, through, or under him, may be barred and foreclosed of all right, title, claim, lien, equity of redemption, and interest in and to said mortgaged premises, and for other and further relief, as will more fully appear by reference to the complaint on file herein.

And you are hereby notified that if you fail to appear and answer to said complaint, as above required, the said plaintiff will apply to the Court for the relief demanded in the said complaint.

(Witness, indorsed, *etc.*, dated and signed.)

NOTE.—Cal. C. C. P., secs. 113, 1167.

### No. 423.—Summons—Unlawful Detainer.

IN THE JUSTICE'S COURT of *Nevada* Township, in the County of *Nevada*, State of *California*.

George Wilson,	}
Plaintiff,	
v.	
A. W. Niles,	}
Defendant.	

The People of the State of California send Greeting to *A. W. Niles*, defendant.

You are hereby required to appear in an action brought against you by the above named plaintiff in the Justice's Court of *Nevada* Township, County of *Nevada*, State of *California*, and to answer before the Justice, at his office in the said township, the complaint filed therein, on the return day thereof, on or before the *twentieth* day of *May*, 1894, or judgment for the relief sought will be taken against you according to the prayer of said complaint.

It is directed that this summons be served on the defendant on

or before the *seventeenth* day of *May, 1894*, and that the summons be returned on the *twentieth* day of *May, 1894*.

That said action is brought to recover possession of those certain premises situated in the Township of *Nevada*, County of *Nevada*, State of *California*, and described in the complaint as follows:

*That certain house in the Town of Slickensville, on the northwest corner of Slime street and Slippery alley, known as the Slum House, which the complaint alleges you occupy as the tenant of plaintiff under a lease from month to month, commencing January 1, 1894, at the rent of \$20 per month, payable on the first day of every month, in advance, and alleging that you owe plaintiff \$20 for rent for the month ending May 1, 1894.*

Also demanding in the complaint that the said sum of \$20 rent due be trebled, and for costs; and you are notified that unless you appear and answer within the time herein designated, that judgment will be taken against you for the possession of said building, the said \$20 rent due trebled, and costs.

Make legal service and due return hereof.

Given under my hand, *etc.*

NOTE 1.—In California the Justices' Courts have jurisdiction in actions of forcible entry and detainer where the rental value of the property does not exceed twenty-five dollars per month, and the whole amount of damages does not exceed two hundred dollars. C. C. P., secs. 113-1167.

NOTE 2.—In Nevada the same, except as to time to appear. Gen. Stats., sec. 3779.

NOTE 3.—In Idaho the same as in Nevada. Rev. Stats., secs. 5101-5104.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2088.

NOTE 5.—In Utah the same as in California, except the return day is fixed in it. Comp. Laws, sec. 3794.

NOTE 6.—In North and South Dakotas the same as in California. Comp. Laws, sec. 6072.

NOTE 7.—In Wyoming the same as in Nevada. Rev. Stats., sec. 3577.

NOTE 8.—In Washington, no jurisdiction.

NOTE 9.—In Oregon, no jurisdiction.

NOTE 10.—In Colorado the same form generally as in California. Gen. Stats., sec. 1496.

NOTE 11.—In Arizona the same as in Montana. Rev. Stats., sec. 2010.

### No. 424.—Summons—Certificate Accompanying.

STATE OF *California*, }  
County of *San Mateo*. } ss.

I, *H. Walker*, County Clerk of the County of *San Mateo*, hereby certify that *Charles P. Wilson*, the person who issued and whose name is signed to the annexed summons, was an acting Justice of the Peace for *Redwood* Township, in said County of *San Mateo*, at the date of said summons.

In witness whereof, I have hereunto set my hand and affixed the seal of the Superior Court of the said County of *San Mateo*, this *10th* day of *June, 1894*.

[SEAL.]

*H. WALKER*, County Clerk.

NOTE.—This form is used when a summons is to be served out of the county where the Justice resides.



**No. 425.—Summons—Alias.**

IN JUSTICE'S COURT of the *City and County of San Francisco*,  
State of *California*.

[TITLE OF COURT AND CAUSE.]

The People of the State of *California*, to *C. Donaldson*, defendant, greeting:

You are hereby required to appear in an action brought against you by the above named plaintiff, in the Justice's Court of the *City and County of San Francisco*, and to answer the complaint filed therein, within *ninety* days (exclusive of the day of service) after the service on you of this summons, the first issued herein having been returned without being served. [Conclude as in original summons.]

**No. 426.—Summons—Return.**

[TITLE OF COURT AND CAUSE.]

I hereby certify that I received the within [or annexed] summons on the *sixth* day of *October*, 1894, and personally served the same on the *eighth* day of *November*, 1894, on *A. B.*, the defendant named in said summons, by delivering to him, personally, in the City of *Sacramento*, County of *Sacramento*, a copy of said summons.

(Signed and dated.)

**No. 427.—Summons—Return—On Arrest.**

[After stating the service of summons and copy of the complaint add], and at the same time and place, by authority of the order of arrest indorsed on said summons, I arrested the said defendant, and he is now in my custody; and immediately after said arrest, to wit: at *two o'clock P. M.* of the same day I personally gave written notice of said arrest to the plaintiff herein.

(Signed and dated.)

**No. 428.—Summons—Return—County, etc.**

[If the defendant is a county, city, or town, say:] "Personally served the same on the *eighth* day of *November*, 1894, on the defendant, the County of *Santa Clara*, by delivering to *G. P. C.*, the President [or Chairman] of the Board of Supervisors of said county, personally," etc.

**No. 429.—Search Warrant—Return.**

STATE OF *California*,  
*City and County of San Francisco*. } ss.

I, the undersigned police officer, do hereby make this my return to this search warrant, and do hereby certify that I have executed and served this warrant by due and diligent search of

the within described premises, on the *fourteenth* day of *July*, A. D. 1894, and by the recovery and seizure of the following described property, to wit: *one faro-box, patent slide, and thumb-screw lever attachment; and I do further certify that I have given a receipt for said property as required by law.*

P. P.,

Police Officer of the *City and County of San Francisco.*

*City and County of San Francisco, ss.*

I, P. P., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant.

(Subscribed and sworn to.)

### No. 430.—Undertaking on Appeal.

IN THE JUSTICE'S COURT of *Sierra Township, in the County of Sierra, State of California.*

*John Brown,*  
Plaintiff,

v.

*Henry A. Wise,*  
Defendant.

Whereas, *Henry A. Wise*, the defendant in the above entitled action, has appealed to the Superior Court of the County of *Sierra*, from a judgment made and entered against him in the said action, in the said Justice's Court, in favor of the plaintiff in the said action, on the *third* day of *May*, 1894, for the recovery of the possession of certain lands and premises therein described, and sixty dollars damages, for the detention thereof, and one hundred dollars, costs of suit; or for the sum of two hundred dollars, and sixty-seven dollars costs, or for the recovery of certain personal property, etc.

Now, therefore, in consideration of the premises, and of such appeal, we, the undersigned, do hereby, jointly and severally, undertake and promise in the sum of one hundred dollars, that the said appellant will pay all costs which may be awarded against him on said appeal, or on a withdrawal or dismissal thereof, not exceeding one hundred dollars, to which amount we acknowledge ourselves jointly and severally bound.

And whereas, the appellant is desirous of staying the execution of the said judgment so appealed from, in so far as relates to the delivery of possession of the said land and premises, etc., we do further, in consideration thereof, and of the premises, jointly and severally undertake and promise in the further sum of two hundred dollars (being the amount for that purpose fixed by the Justice of said Court); that during the possession of said property by the appellant, he will not commit, or suffer to be committed, any waste thereon, and that if the said judgment appealed from be affirmed, or the appeal dismissed or withdrawn, or if judgment be recovered against him in the action in the Superior Court, he will pay the

*value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof, not exceeding the said sum of two hundred dollars, so as aforesaid fixed by the said Justice of said Court, by which the said judgment was rendered; and that appellant will pay any judgment and costs that may be recovered against him in the said action in the Superior Court, not exceeding two hundred dollars, as fixed by the Justice of said Court.*

[For justification of sureties, see No. 954.]

NOTE 1.—In California the same general form will answer for all appeals. A bond on appeal must be given to pay costs, and to prosecute the appeal, and to pay any judgment recovered in appellate Court. C. C. P., sec. 978.

NOTE 2.—In Nevada the same form. Gen. Stats., sec. 3603.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 4842.

NOTE 4.—In Montana the same. C. C. P., sec. 1763.

NOTE 5.—In Utah the same. Comp. Stats., sec. 3660.

NOTE 6.—In North and South Dakotas the same. Comp. Laws, sec. 6133.

NOTE 7.—In Wyoming the same. Rev. Stats., secs. 3153, 3487; but before the Justice shall allow appeal the party desiring to appeal must make affidavit that the appeal is made in good faith, and not for the purpose of delay, and that he really believes that injustice has been done him by the verdict, or judgment. *Id.*, sec. 3488.

NOTE 8.—In Washington the same as in California. Hill's Stats., sec. 1631.

NOTE 9.—In Oregon the same. Hill's Laws, p. 1025; Laws of 1893, p. 38.

NOTE 10.—In Colorado, the California form includes all required by the Statutes of Colorado. Mills' Stats., sec. 2744.

NOTE 11.—In Arizona the same as in California. Rev. Stats., sec. 1453.

### No. 431.—Undertaking on Order of Arrest.

[TITLE OF COURT AND CAUSE.]

Whereas, an order to arrest the *defendant* in the above entitled action is about to be issued: Now, therefore, we, the undersigned, *Gustavus Kohn*, as principal, and *Charles Christian and Lorenzo Sands*, as sureties, do undertake, on the part of the *plaintiff* in said action, that *if the said defendant recover judgment, the said plaintiff will pay to said defendant all costs that may be adjudged to the said defendant, and all damages which he may sustain by reason of the said arrest, if the same be wrongful or without sufficient cause, not exceeding the sum of three hundred dollars.*

Witness our hands, *etc.*

[For justification of securities, see No. 954.]

NOTE 1.—Cal., C. C. P., secs. 482, 487. See same form in Superior Courts and notes.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 3548.

NOTE 3.—In Idaho the same. Rev. Stats., secs. 424, 4249.

NOTE 4.—In Montana the same. C. C. P., secs. 803, 1541.

NOTE 5.—In Utah the same. Comp. Laws, sec. 3269.

NOTE 6.—In North and South Dakotas the same. Comp. Laws, secs. 4953-4943.

NOTE 7.—In Wyoming the same. Rev. Stats., sec. 2841.

NOTE 8.—In Washington the same. Hill's Stats., secs. 1485-1489.

NOTE 9.—In Arizona the same. Rev. Stats., secs. 2064, 109, 111.

NOTE 10.—In Colorado a debtor can be arrested only after trial.

NOTE 11.—In Arizona the same as in California. Comp. Laws, sec. 552.



**No. 432.—Undertaking by Defendant on Arrest.**

[TITLE OF COURT AND CAUSE.]

Whereas, the *defendant* in the above entitled action has been arrested at the suit of the *plaintiff* in the said action, and has demanded an adjournment of the trial: Now, therefore, we, the undersigned, *Elnathan Andrews*, as principal, and *Felix Burns* and *Perry Anderson*, as sureties, do undertake, in the sum of *one thousand* dollars, on the part of the said *defendant*, that, if the said *defendant* be discharged from arrest, he will render himself amenable to the process of the Court during the pendency of the said action, and such as may be issued to enforce the judgment therein; or that he will pay to the *plaintiff* the amount of any judgment which he may recover in said action, not exceeding the said sum of *one thousand* dollars.

Witness our hands, *etc.*

[For justification of sureties, see No. 954.]

NOTE.—See preceding form, No. 431, and the sections immediately following the ones referred to. In some places the amount of the plaintiff's demand may be deposited; in others an undertaking may be given.

**No. 433.—Undertaking on Attachment.**

[TITLE OF COURT AND CAUSE.]

Whereas, the above named *plaintiffs* have commenced, or are about to commence an action in the Justice's Court of the *First* Township, in the County of *Solano*, State of *California*, against the above named *defendant*, upon a contract for the direct payment of money, claiming that there is due to the said *plaintiffs*, from the said *defendant*, the sum of *two hundred* dollars, *gold coin*, of the United States, besides interest, and an attachment against the property of the said *defendant*, as security for the satisfaction of any judgment that may be recovered therein, has been demanded by said *plaintiffs*.

Now, therefore, we, the undersigned, residents of the County of *Solano*, in consideration of the premises, and of the issuing of said attachment, do jointly and severally undertake, in the sum of *three hundred* dollars, *gold coin*, and promise to the effect that if the said *defendant* recovers judgment in said action, the said *plaintiffs* will pay all costs that may be awarded to the said *defendant*, and all damages which he may sustain by reason of the said attachment, not exceeding the sum of *three hundred* dollars.

Witness our hands, *etc.*

[For justification of sureties, see No. 954.]

NOTE 1.—Cal. C. C. P., sec. 867.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 3147.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 4687.

NOTE 4.—In Montana the same. C. C. P., secs. 910, 1687.

NOTE 5.—In Utah the same. Comp. Laws, sec. 3573.

NOTE 6.—In North and South Dakotas the same. Comp. Laws, 6068.

NOTE 7.—In Wyoming the same. Rev. Stats., sec. 3542.

NOTE 8.—In Washington a statutory form or its "equivalent" may be used. The above contains all the essentials of the Washington form. See Hill's Stats., sec. 1558, p. 591.

NOTE 9.—In Oregon the California form is ample with the addition of the words, "or if the same be wrongful or without sufficient cause," added after the words "judgment in said action." Hill's Laws, p. 1049.

NOTE 10.—In Colorado the same as in Oregon, except the words to be inserted are, "or if the same was wrongfully obtained." Mills' Stats., sec. 2701.

NOTE 11.—In Arizona the same as in California, except all after the word "attachment" in the last line should be omitted. Rev. Stats., sec. 44.

### No. 434.—Undertaking on Release of Attachment.

[TITLE OF COURT AND CAUSE.]

Whereas, the *plaintiff* in the above entitled cause has commenced an action in the aforesaid Court against the above named *defendants* for the recovery of *two hundred and fifty (250) dollars, gold coin* of the United States.

And whereas, an attachment has been issued, directed to the Constable of *Pine Grove Township*, of the County of *Monterey*, and placed in his hands for execution, whereby he is commanded to attach and safely keep all the property of the said *defendants* within his county not exempt from execution, or so much thereof as may be sufficient to satisfy the *plaintiff's* demand therein stated, in conformity with the complaint, at *two hundred and fifty dollars, gold coin* of the United States, unless the *defendants* give him security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy said demand besides costs [or in an amount equal to the value of the property which has been or is about to be attached], in which case to take such undertaking.

And whereas, the said *defendants* are desirous of giving the undertaking mentioned in the said writ.

Now, therefore, we, the undersigned, residents of *Pine Grove Township*, in the County of *Monterey*, in consideration of the premises, and to prevent the levy of said attachment, do hereby jointly and severally undertake in the sum of *three hundred (300) dollars gold coin of the United States*, and promise to the effect that if the said *plaintiff* shall recover judgment in said action, we will pay to the said *plaintiff* the amount of said judgment, together with the costs, not exceeding in all the sum of *three hundred (300) dollars, gold coin of the United States*.

Dated the *twenty-fifth day of October, 1894*.

[For justification of sureties see, No. 954.]

NOTE 1.—Cal. C. C. P., sec. 868.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 3162.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 4688.

NOTE 4.—In Montana the same. C. C. P., sec. 893.

NOTE 5.—In Utah the same. Comp. Laws, sec. 3574.

NOTE 6.—In North and South Dakotas the same. Comp. Laws, sec. 6069.

NOTE 7.—In Wyoming the same. Rev. Stats., secs. 3556-7.

NOTE 8.—In Washington the same. Hill's Stats., sec. 1558, p. 591. See note to preceding form.

NOTE 9.—In Oregon the same as in California with all after the word "judgment" (at the end) omitted. Hill's Laws, p. 1049.

NOTE 10.—In Colorado the bond may be for the amount claimed in the complaint or in an amount equal to the value of the property attached. Mills' Stats., sec. 2705.

NOTE 11.—In Arizona the same as in California. Rev. Stats., sec. 58.

### No. 435.—Undertaking on Claim and Delivery of Personal Property.

[TITLE OF COURT AND CAUSE.]

Whereas, the *plaintiff* in the above entitled action has this day filed his complaint in the above named Court against the defendant in the said action, claiming the delivery of

[Description of property.]

Now, therefore, we, *Ezra Hollis*, as principal, and *Thomas James* and *Charles Thomas*, as sureties, do hereby agree and undertake, and are bound to said *defendant* in consideration of said delivery, in the sum of *five hundred (500)* dollars, being double the value of the property mentioned in plaintiff's affidavit herein, for the prosecution of the action, for the return of the said property to the said defendant, if return thereof be adjudged by the said Court, and for the payment to the said defendant of such sum as may from any cause be recovered against the said plaintiff, not exceeding the said sum of five hundred dollars.

Indorsed: The within undertaking is approved by me this *twenty-fifth* day of *July, 1894*.

EDWIN IRVIN,

Constable of *Sixth* Township in said County.

In witness whereof, *etc.*

[For justification of sureties, see Form No. 954.]

NOTE 1.—Cal. C. C. P., sec. 512. See same form in Superior Court, and notes.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 3124.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 4274.

NOTE 4.—In Montana the same. C. C. P., sec. 843.

NOTE 5.—In Utah the same, Comp. Stats., sec. 3290.

NOTE 6.—In North and South Dakotas the same. Comp. Laws., sec. 4975.

NOTE 7.—In Wyoming the same; the bond is to pay all damages. Rev. Stats., sec. 2526.

NOTE 8.—In Washington the same as in California, except the undertaking must be to pay all damages sustained. Hill's Stats., secs. 1493, 1558, p. 591.

NOTE 9.—In Oregon the same as in Washington. Hill's Laws, p. 1043. See Superior Court.

NOTE 10.—In Colorado the same as in Washington. Mills' Stats, sec. 2743.

NOTE 11.—In Arizona the same as in California. Rev. Stats., sec. 194.

### No. 436.—Undertaking on Return to Defendant on Claim and Delivery.

[TITLE OF COURT AND CAUSE.]

Whereas, *Samuel C. Harding*, Constable of *Sixth* Township, in the County of *Marin*, under and by virtue of a certain writ duly made and issued in the above entitled action, and to him directed, did, on the *twenty-fifth* day of *July, 1894*, take from the possession of the *defendant* in said action the following personal property, to wit:

[Description of the property.]



And whereas, the said *defendant* requires that the said property be returned to him by the said Constable:

Now, therefore, we, the undersigned, *Frank Baldwin* and *Caleb Winter*, as sureties, in consideration of the premises and of the said return of the said property by the said Constable to the said *defendant*, do hereby undertake and acknowledge ourselves jointly and severally bound unto the said plaintiff in the sum of five hundred dollars (being double the value of the said property, as stated in the affidavit of the said plaintiff), for the delivery thereof to the said plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the said *defendant*.

In witness whereof, *etc.*

[For justification of sureties, see No. 954.]

NOTE 1.—Cal. C. C. P., sec. 514. See same form in Superior Court, and notes.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 3126.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 2276.

NOTE 4.—In Montana the same. C. C. P., sec. 849.

NOTE 5.—In Utah the same. Comp. Laws, sec. 3292.

NOTE 6.—In North and South Dakotas the same. Comp. Laws, sec. 4977.

NOTE 7.—In Wyoming the same, with one surety. Rev. Stats., sec. 3524, and Stats. 1890-91, p. 371.

NOTE 8.—In Washington the same as in California. Hill's Stats., sec. 1494.

NOTE 9.—In Oregon. See Superior Court.

NOTE 10.—In Colorado the same as in California. Mills' Stats., sec. 2751.

NOTE 11.—In Arizona the same as in California. Rev. Stats., sec. 195.

## No. 437.—Undertaking on Appeal from Fine and Imprisonment.

[TITLE OF COURT AND CAUSE.]

KNOW ALL MEN BY THESE PRESENTS: That we, *John Doe*, as principal, and *Richard Roe* and *Ezra Styles*, as sureties, are held and firmly bound unto the People of the State of *California*, in the sum of *five hundred* dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Signed with our hands, and sealed with our seals, this *fifth* day of *August* 1894.

The condition of the above undertaking is such, that, whereas, the said *John Doe* was, on the *fourth* day of *August*, 1894, before *E. B. Mahon, Esq.*, a Justice of the Peace, in and for Township of *Clarendon*, County of *Marin*, duly convicted of the crime of [*state the crime*], as follows: *The crime of carrying a concealed weapon; or, of assault and battery, etc.*, and upon said conviction, it was ordered and adjudged by the said Justice, that the said *John Doe* pay a fine, the sum of *fifty* dollars, and that said *John Doe* be imprisoned in the County Jail, in and for the said County of *Marin*, till said fine be paid, said term of imprisonment not to exceed *twenty-five* days.

And whereas, the said *John Doe* is desirous of appealing from

the decision and judgment of said Justice to the Superior Court of the County of Marin:

Now, therefore, we, the undersigned, hereby undertake that if the said judgment shall be affirmed, or modified, or the appeal be dismissed by the said Superior Court, that the said John Doe shall well and truly pay, or cause to be paid, the fine aforesaid, the sum of fifty dollars, or such part of said fine as the said Superior Court may direct; if the judgment is affirmed or modified, or the appeal dismissed, or in case the judgment be reversed, and the case remanded for a new trial, that he will appear in the Court to which the case may be remanded, and submit himself to the orders and processes thereof, then this obligation to be null and void, otherwise to be and remain in full force.

(Signed.)

Approved by me, this *fifth* day of *August*, 1894.

[For justification of sureties, see No. 954.]

NOTE 1.—Cal. Pen. Code, sec. 1273. If the judgment is a fine, the amount may be deposited in lieu of.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 3606.

NOTE 3.—In Idaho the same, but insert that the defendant will prosecute his appeal. Rev. Stats., sec. 8820.

NOTE 4.—In Montana the same. Pen. Code, sec. 2714.

NOTE 5.—In Utah the same as in California. Comp. Stats., sec. 5179.

NOTE 6.—In North and South Dakotas the same, and the defendant must undertake not to depart from the State without the Court's permission. Comp. Laws, sec. 6197.

NOTE 7.—In Wyoming the same as in Dakota. Rev. Stats., sec. 3655.

NOTE 8.—In Washington the same bond as in California. Hill's Stats., sec. 1639.

NOTE 9.—In Oregon the same as in California. Hill's Laws, p. 103, sec. 2159. It is taken the same as in a civil action. See Notice of Appeal.

NOTE 10.—In Colorado the same as in California. Mills' Stats., sec. 2771.

NOTE 11.—In Arizona the same as in California. Rev. Stats., sec. 1453.

### No. 438.—Undertaking on Appeal from Judgment of Imprisonment.

[TITLE OF COURT AND CAUSE.]

KNOW ALL MEN BY THESE PRESENTS: That we, *John Doe*, as principal, and *Richard Roe* and *Ezra Styles*, as sureties, are held and firmly bound unto the People of the State of *California*, in the sum of *five hundred* dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Signed with our hands and sealed with our seals, this *fifth* day of *August*, 1894.

The condition of the above undertaking is such, that whereas the said *John Doe* was, on the *second* day of *August*, 1894, before *A. J. Caldwell, Esq.*, a Justice of the Peace in and for *Dam* Township, County of *Siskiyou*, duly convicted of the crime of petit larceny, and upon said conviction it was ordered and adjudged by the said Justice that the said *John Doe* be imprisoned in the County Jail, in and for the County of *Siskiyou*, for the term of *four* months.

And whereas, the said *John Doe* is desirous of appealing from the decision and judgment of said Justice to the County Court, in and for the County of *Siskiyou*.

Now, therefore, if the said *John Doe* shall surrender himself in execution of the judgment, upon its being affirmed, modified, or upon the appeal being dismissed by the said Superior Court, or in case the judgment be reversed, and the case remanded for a new trial, that he will appear in the Court to which the case may be remanded, and submit himself to the orders and processes thereof; then this obligation to be null and void and of no effect; otherwise to be and remain in full force and virtue.

Approved by me, etc.

(Signed.)

[Justification of sureties as in No. 954.]

### No. 439.—Undertaking—Bail Bond—General.

[TITLE OF COURT AND CAUSE.]

An order having been made on the *twenty-sixth* day of *January*, 1894, by *Geo. W. Fox*, Esq., a Justice of the Peace of Township *Three*, *San Mateo* County, that *John Smith* be held to answer and to appear for trial before the said Justice, at his office, on the *twenty-eighth* day of *January*, 1894, [to which time the hearing of this case has been adjourned], upon a charge of carrying a concealed weapon, upon which he has been admitted to bail in the sum of *five hundred* dollars, and which charge is pending in that Court against him in behalf of the People of the State of *California*;

Now, we, *Robert Jones*, a resident of *Redwood City*, and by occupation a farmer, and *Thomas Smith*, a resident of *San Mateo*, and by occupation a farmer, hereby undertake that the above named *John Smith* will appear and answer the charge above mentioned, in whatever Court it may be prosecuted, and will at all times hold himself amenable to the orders and processes of the Court, and, if convicted, will appear for judgment, and render himself in execution thereof; or, if he fail to perform either of these conditions, that we will pay to the People of the State of *California* the sum of *five hundred* dollars.

Approved by me, etc.

(Signed.)

[Justification of sureties as in No. 954].

### No. 440.—Undertaking—Bond for Appearance of Witness, etc.

[TITLE OF COURT AND CAUSE.]

Before *S. B. Short*, Esq., Justice of the Peace.

Personally appeared in the Justice's Court, in and for the Township of *Lewiston*, and County of *Trinity*, in open Court, *Richard Roe* and *Ezra Styles*, and acknowledged themselves, and



each of them, justly indebted to the People of the State of California in the sum of *five hundred* dollars.

Sealed with their seals, and dated this *twenty-fifth* day of *December*, 1894.

The condition of the above obligation is such, that whereas an order having been made on the *fourth* day of *August*, 1894, by *S. R. Short*, a Justice of the Peace in and for the County of *Trinity*, that *John Doe* be held to answer upon a charge of grand larceny. And whereas, on the examination of said *John Doe*, upon the charge aforesaid, *John Smith* was examined as a witness on the part of the People of the State of California; and whereas, said *John Smith* is a material witness for the People of the State of California:

Now, therefore, *we*, the said *Richard Roe* and *Ezra Styles*, hereby undertake that the above named *John Smith* shall appear and testify on the part of the People of the State of California against said *John Doe*, in whatever Court the deposits and statements are to be sent, or, if he fail to perform either of these conditions, that we will pay to the People of the State of California the sum of *five hundred* dollars.

Approved by me, *etc.*

(Signed.)

[For justification of sureties, see No. 954.]

NOTE.—Cal. Pen. Code, sec. 878. Sufficient in all States.

### No. 441.—Undertaking—Postponement of Action.

[TITLE OF COURT AND CAUSE.]

We, the undersigned, are bound to *A. B. C.*, the plaintiff herein, in the sum of \$250. The condition of this undertaking is that, whereas, this case was this day called for trial in said Court, and said defendant, being under arrest, moved the Court, on affidavit showing sufficient cause, to postpone the said trial for thirty days from date, on account of the absence of a material witness for defendant, and the said motion having been by said Justice granted on condition that defendant file an undertaking in said action, to be approved by him, in the sum of \$250, to the effect that said defendant will render himself amenable to the process of said Court during the pendency of said action, such as may be issued to enforce the judgment therein, or that the sureties will pay the plaintiff the amount of any judgment that may be recovered in the action, not exceeding \$250.

Now, *etc.*

[For justification of sureties, see No. 954].

### No. 442.—Undertaking to Keep the Peace.

[TITLE OF COURT AND CAUSE.]

Personally appeared in the Justice's Court of *Colusa* Township, in the County of *El Dorado*, *R. B. and C. D.*, and acknowledged

themselves, and each of them, indebted to the people of the State of *California* in the sum of *five thousand* dollars.

Dated and signed this *tenth* day of *August*, 1894.

The condition of this obligation is such that whereas, the above bounden *R. B.* has been held to keep the peace by order of *A. L. C.*, a Justice of the Peace of said township, made on the *ninth* day of *August*, 1894.

Now, if the said *R. B.* shall keep the peace toward the people of the State of *California*, and particularly toward *D. F. G.* of said township, for six months from the date of said order, then this obligation to be void, otherwise to remain in full force and effect.

(Signed and justified to as are other bonds.)

[For justification of sureties, see No. 954.]

NOTE 1.—In California, an information may be laid before a magistrate that a person has threatened to commit an offense against the person or property of another. If it turns out to be true, a bond to keep the peace, etc., may be required. Penal Code, sec. 706.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 3921.

NOTE 3.—In Idaho the same. Gen. Stats., sec. 7053.

NOTE 4.—In Utah the same. Comp. Stats., sec. 4801.

NOTE 5.—In North Dakota and South Dakota the same. Comp. Laws, sec. 7049-7065.

NOTE 6.—In Wyoming the same. Rev. Stats., sec. 3157.

NOTE 7.—In Washington the same. Hill's Stats., sec. 1573.

NOTE 8.—In Oregon the same. Hill's Laws, sec. 1638, p. 867.

NOTE 9.—In Colorado the same. Mills' Stats., sec. 1482.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1143.

NOTE 11.—In Montana the same. P. C., sec. 1435.

#### No. 443.—Verdict for Plaintiff.

We, the jury, find for plaintiff, and assess his damages at \$150.  
*August 11, 1894.* J. H., Foreman.

#### No. 444.—Verdict for Defendant [or Plaintiff].

We, the jury, find for defendant.  
*August 11, 1894.* J. H., Foreman.

#### No. 445.—Verdict for Defendant—Counter-claim.

We, the jury, find for defendant on his counter-claim, in the sum of \$175.

*August 11, 1894.* J. H., Foreman.

#### No. 446.—Verdict in Replevin for Plaintiff.

We, the jury, find for plaintiff, and we find the value of the property in controversy to be \$200, and that plaintiff is entitled to a return thereof from defendant. We also find for plaintiff in the sum of \$100 damages for the taking and detention of said property by defendant.

*August 11, 1894.* J. H., Foreman.

**No. 447.—Verdict in Replevin for Defendant.**

We, the jury, find for defendant, and we find the value of the property in controversy to be \$200, and that defendant is entitled to a return thereof from plaintiff. We also find for defendant in the sum of \$100 damages for the taking and detention of said property by plaintiff.

August 11, 1894.

J. H., Foreman.

**No. 448.—Verdict in Replevin—Specific Portions of Property.**

We, the jury, find for [either party] and we find the value of all the property in controversy to be \$200, and that [either party] is entitled to a return thereof from [either party]. We also find that the *brindle cow* described in the [complaint or answer] is worth \$50. We also find for [defendant or plaintiff] in the sum of \$100 damages for the taking and detaining of said property by [either party].

August 11, 1894.

J. H., Foreman.

**No. 449.—Special Issues.**

1. Was plaintiff on the *first day of May, 1894*, the owner of and entitled to the possession of a *brindle cow* named *Moo*?

2. Did defendant on said day enter the premises of plaintiff, and drive said *cow* away, and take possession of her, without plaintiff's consent?

3. Did defendant have said *cow* in his possession at the date of the commencement of this action?

4. What is the value of said *cow*?

5. Has plaintiff sustained damages on account of the taking of said *cow* by defendant [if you find that plaintiff owned her and defendant took her away]?

6. What damages has plaintiff sustained by reason of the taking of said *cow* by defendant [if you find that he took her]?

**No. 450.—Verdict on Special Issues.**

We, the jury, in the above entitled matter, do find this, our verdict, as by the answers to the interrogatories below stated, signed by our foreman:

*First Issue.* [Repeat the interrogatory.] Answer—*Yes.*

*Second Issue.* [Repeat the interrogatory.] Answer—*Yes.*

*Third Issue.* [Repeat the interrogatory.] Answer—*Yes.*

*Fourth Issue.* [Repeat the interrogatory.] Answer—*\$100.*

*Fifth Issue.* [Repeat the interrogatory, except the last clause.] Answer—*Yes.*

*Sixth Issue.* [Repeat the interrogatory, except the last clause.] Answer—*\$50.*

August 11, 1894.

Signed: J. H., Foreman.



**No. 451.—Venire.**

STATE of California, }  
 County of Lake, Big Valley Township. } ss.

Before R. H. Lawrence, Justice of the Peace.

To the Sheriff or any Constable of said county, Greeting:

You are hereby commanded to summon *twenty-five citizens qualified to serve as jurors*, to be and appear at my office in said Big Valley Township, in the County of Lake, at *ten o'clock A. M.*, on the *twenty-sixth* day of *July, 1894*, to act as jurors in a *civil* action wherein *W. W. Lawton is plaintiff* and *Jacob Smith is defendant*; and of this writ make legal service and due return.

(Dated and signed.)

**No. 452.—Venire—Indorsement.**

I hereby certify, that in compliance with the within writ, I have summoned the following named persons to act as jurors in the within mentioned action, to wit: [*Names of persons summoned*].

Witness my hand, this *twenty-sixth* day of *July, 1894*.

CHARLES HARDING,

Constable.

NOTE.—Cal. C. C. P., sec. 230. Good everywhere.

**No. 453.—Warrant of Arrest.**

[TITLE OF COURT AND CAUSE.]

The People of the State of California, to any Sheriff, Constable, Marshal, or Policeman in the County of Napa:

A complaint (or information), upon oath, having been this day laid before me, by *Erastus Downey*, that the crime of burglary has been committed, and accusing *Jack Sheppard* thereof, you are therefore commanded forthwith to arrest the above named *Jack Sheppard*, and bring him before me forthwith, at my office in said township, in said County of Napa [*or, in case of my absence or inability to act, before the nearest or most accessible Magistrate in this county*], to be dealt with according to law.

Dated at my office in said township, in said County of Napa, this *fifteenth* day of *June, 1894*.

C. A. COLES,

Justice of the Peace of said Township.

**No. 454.—Warrant—Indorsement of Service.**

I hereby certify, that I received the within warrant on the *fifteenth* day of *June, 1894*, and served the said warrant by arresting the within named defendant, *Jack Sheppard*, and bringing him into Court, this *fifteenth* day of *June, 1894*.

A. B. WALKER,

Sheriff of Napa County.

The within named *Jack Sheppard*, having been brought before me under this warrant, is committed for *examination to the Sheriff of the County of Napa*.

(Dated and signed.)

NOTE 1.—California. When complaint is made before a Justice or Police Judge of the commission of an offense triable in such Courts, a warrant must be issued for the arrest of the person charged. Pen. Code, sec. 1427.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 4478.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 7519.

NOTE 4.—In Montana the same. P. C., sec. 1600.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4840.

NOTE 6.—In North and South Dakotas the same. Comp. Laws, sec. 6148.

NOTE 7.—In Wyoming the same. Rev. Stats., sec. 3624.

NOTE 8.—In Washington the same. Hill's Stats., sec. 1572.

NOTE 9.—In Oregon the same. Hill's Laws, secs. 1549-50, p. 843.

NOTE 10.—In Colorado the same. Mills' Stats., sec. 1434.

NOTE 11.—In Arizona the same. Rev. Stats., sec. 1273.

### No. 455.—Warrant—Search.

STATE OF *California*,  
County of *Contra Costa*. } 88.

The People of the State of *California*, to any Sheriff, Constable, Marshal, or Policeman in the County of *Contra Costa*:

Proof, by affidavit, having been this day made before me by *John Brown*, that at the house of *Henry A. Wise*, at No. 537 *California Street*, in the Town of *Martinez*, in said county, in room No. 72, in a tin box, in an old hair trunk under a bedstead, there is a gold hunting-case watch, No. 172,351, *Dirking & Co.*, makers, *Dogtown, Sierra Co., Cal.*, which watch was stolen from the person of *Alexander Dunn*, on or about April 1, 1894, and there is probable grounds for believing that said affidavit is true. [If under the statute the search may be made in either the day or night. So state in the warrant.]

You are therefore commanded to make immediate search, in the daytime, of the house of *Henry A. Wise*, No. 537 *California street*, in the Town of *Martinez*, in the said county, for the following described property: [*description as above*], and if you find the same, or any part thereof, to bring it forthwith before me, at my court-room, in *Brayton Township*, in said *Contra Costa County*.

Given under my hand, *etc.*

[An inventory of the property taken by the officer should be made on the back of the warrant.]

NOTE 1.—California. A search warrant is only issued upon affidavit, naming or describing the person, and particularly describing the property and place to be searched. Pen. Code, sec. 1529.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 4516.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 8396.

NOTE 4.—In Montana the same. P. C., sec. 2826.

NOTE 5.—In Utah the same. Comp. Laws, sec. 5407.

NOTE 6.—In North and South Dakotas the same. Comp. Laws, sec. 7618.

NOTE 7.—In Wyoming the form is the same. Rev. Stats., sec. 3170.

NOTE 8.—In Washington the same. Hill's Stats., sec. 1333.

NOTE 9.—In Oregon the same. Hill's Laws, sec. 1681.

NOTE 10.—In Colorado the same. Mills' Stats., sec. 1492.

NOTE 11.—In Arizona the same. Rev. Stats., sec. 2333.

### No. 456.—Writ of Attachment.

IN THE JUSTICE'S COURT of the *Second Township*, in the County of *Sacramento*, State of *California*.

<p><i>John Rising</i> and <i>Joseph Plagerman</i>, Plaintiffs, v. <i>John Morton</i>, Defendant.</p>	}
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The People of the State of *California*, to the Sheriff or any Constable of the County of *Sacramento*, Greeting:

You are hereby commanded to attach and safely keep all the property of the above named defendant in this county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, to wit: *twenty-eight dollars and fifty cents, gold coin of the United States, besides the costs, unless the said defendant shall give you security by the undertaking of two sufficient sureties, in an amount sufficient to satisfy said demand, besides costs, in which case you will take such undertaking.*

Make due return thereof.

Given under my hand, etc.

(Signed.)

NOTE 1.—California. The writ is directed to the Sheriff or any Constable of the county, or the Sheriff of any other county, and must require him to attach and safely keep all the property of the defendant within his county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, unless the defendant give him security, by the undertaking of two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs; in which case, to take such undertaking. C. C. P., sec. 868.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 3143.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 4638.

NOTE 4.—In Montana the same. C. C. P., sec. 1562.

NOTE 5.—In Utah the same. Comp. Laws, sec. 3311.

NOTE 6.—In North and South Dakotas the same, except the writ runs only against personalty. Comp. Laws, sec. 6063.

NOTE 7.—In Wyoming the same as in California. Rev. Stats., sec. 3543.

NOTE 8.—In Washington the writ runs against the "goods and chattels, moneys, and effects, and credits" of the defendant. In other respects, the same as in California. Hill's Stats., sec. 1:58.

NOTE 9.—In Oregon the writ runs only against personal property, the same as in Washington. Hill's Laws, p. 1046.

NOTE 10.—In Colorado the same as in Oregon. Mills' Stats., sec. 2702.

NOTE 11.—In Arizona the same as in California. Rev. Stats., sec. 50.



## II. SUPERIOR COURT—INSOLVENCY.

**SUMMARY OF THE INSOLVENCY LAWS OF THE STATES AND TERRITORIES REFERRED TO IN THIS BOOK.**—Laws regulating insolvency proceedings are unlike laws regulating assignments for the benefit of creditors. The object of insolvency proceedings is to distribute a debtor's property equally among his creditors, and discharge him from further legal obligation to pay. The object of assignment for the benefit of creditors is only to distribute a debtor's property among creditors, leaving the debtor still liable for his debts. Frequently, however, the same result is accomplished in each proceeding by agreement with the debtor to discharge him from his debts in consideration of the assignment. In some States both proceedings are regulated by statute; in others, only one.

In California a person owing over \$300 may apply to the Superior Court of the county where he has resided for six months next preceding the filing of his petition. In his petition he must state the place of his residence, his inability to pay his debts in full, his willingness to surrender all his estate and effects for the benefit of his creditors, and his desire to obtain a discharge from all his debts and liabilities. He must annex to his petition an inventory and valuation of his property. The filing of the petition is an act of insolvency, and thereupon the petitioner is adjudged an insolvent debtor. The inventory and schedule must contain a full and true statement of all his debts and liabilities, stating to whom they are due, his creditors' residences, the amount due each, the nature of the indebtedness, the true cause thereof and consideration, the time and place where it occurred, and a statement of any pledge, lien, mortgage, judgment, or other security for the payment of such debt. It must also contain an accurate description of all the petitioner's estate, including his homestead, and all exempt property, and a statement of any incumbrance thereon; also, a statement of causes of action in favor of or against the petitioner. The petition must be verified in form as it appears in the oath printed at the end of the petition and schedules in Form No. 460.

The creditors meet and elect assignees; and after three months from the adjudication of insolvency the debtor may be discharged. A debtor may be adjudicated an insolvent on the petition of five or more creditors, residents of the State, whose demands accrued in the State and amount in the aggregate to not less than \$500; provided the petitioners have not become creditors, by assignment, within three months from the filing of the petition. Such petition must be verified by at least three petitioners, and must show that the debtor is about to depart from the State, with intent to defraud his creditors, or being absent from the State with such intent, remains absent, or conceals himself, to avoid the service of legal process, or conceals or is removing any of his property, to avoid being attached or taken on legal process; or, being insolvent, has suffered his property to remain under attachment or legal process for four days, or has confessed or offered to allow judgment in favor of any creditors, or willfully suffered judgment to be taken against him by default, or suffered or procured his property to be taken on legal process, with intent to give preference to one or more creditors, or has made any assignment, gift, sale, conveyance, or transfer of his estate, property, rights, or credits, with intent to delay, defraud, or hinder his creditors; or, in contemplation of insolvency, has made any payment, gift, grant, sale, conveyance, or transfer of his estate, property, rights, or credits, *etc.* Stats. 1895, p. 131.

In Nevada the law is substantially the same as in California. Gen. Stats., secs. 3843-3894.

In Idaho the law is the same, substantially, as in California, except petition by creditors is not allowed. Rev. Stats., secs. 5875-5932.

In Montana there is no general statute.

In Utah no statute.

In North and South Dakotas no statute.

In Wyoming no statute.

In Washington the law is substantially the same as in California. Every insolvent debtor, without reference to the amount of his debts, may be discharged. The oath to the schedule is the same as in California; but petition by creditors is not allowed. Hill's Stats., secs. 2756-2783.

In Oregon insolvency proceedings come under the head of assignments for the benefit of creditors. In such proceedings a debtor may be discharged from his debts the same as in insolvency proceedings elsewhere. Hill's Laws, secs. 3173-3187, p. 1480. See "Assignments," Part I.

In Colorado the same as in Oregon, except as to discharge. See "Assignments."

In Arizona no statute.

In all cases under this head, see "Assignments," and "Assignments for the Benefit of Creditors," Part I.

## No. 457.—Petition by Debtor.

IN THE SUPERIOR COURT of the *City and County of San Francisco*,  
State of *California*.

In the Matter of  
*John Brown*,  
An Insolvent Debtor. }

To the Honorable, the Superior Court of the *City and County of San Francisco*, State of *California*:

The petition of *John Brown* respectfully shows: That your petitioner is, and for more than six months next preceding the filing of this petition has been, a resident of the *City and County of San Francisco*, State of *California*; that he has since the 26th day of *March*, 1894, been engaged in the business of *keeping a retail grocery* at the *City and County of San Francisco*; that in consequence of *bad debts due him and the loss of custom following the passage by the Legislature of the State of California, of the Act known as the Pedro Bill*, your petitioner has become, and is insolvent, and utterly unable to pay his debts in full, and is an insolvent debtor within the true intent and meaning of the Act of the Legislature of *California*, entitled "An Act for the Relief of Insolvent Debtors, for the Protection of Creditors, and for the Punishment of Fraudulent Debtors," approved *March 26*, 1895, and being desirous of having the estate, property, and effects of your petitioner applied to the payment of his debts and liabilities, porportionately, and without preference to any, he, for that purpose, is willing to, and does, surrender all his estate and effects for the benefit of his creditors, in pursuance of the provisions of said Act; and your petitioner, the insolvent, declares that it is his desire to be discharged from all his debts and liabilities, and that he has truly described them all in his schedules hereto annexed, according to the best of his knowledge and belief.

The appendix annexed, marked "A," contains a summary statement of the affairs of your petitioner.

The schedule hereto annexed, marked "B," contains the names and places of residence of his creditors, as near as he can now state them, and the sum due to each creditor, the true nature of the indebtedness or demand, and the true cause and consideration thereof, and the time and place when and where said indebtedness accrued, and a statement of any existing pledge, lien, mortgage, judgment, or other security, for the payment of the same.

The schedule hereto annexed, marked "C," contains an accurate description of all the estate, both real and personal, of your petitioner, including his *homestead*, and all property exempt by law from execution, the place where situated, and a statement of all incumbrances thereon.

Wherefore, your petitioner prays to make a cession of his estate, and to be discharged from all claims, debts, liabilities, and demands

set forth in the schedule hereto annexed, or which may be proved against his estate in insolvency, in pursuance of the provisions of said Act.

JOHN BROWN, Petitioner.

Dated this first day of December, 1895.

NOTE.—The schedules must, in addition, give an outline of the facts touching any liability, directly or indirectly, in the nature of any right of action against the insolvent by any person, or in his favor against any person.

#### OATH TO PETITION.

[See oath to Schedule and Inventory.]

#### APPENDIX A.

[Part of the Petition.]

*The following is a Summary Statement of Petitioner's affairs with the estimated value of all his property and the amount of all incumbrances:*

	Dollars. Cts.	
Capital on the sixteenth day of June, 1894,—Cash .....	10,000 00	
	Dollars. Cts.	
Value of Real Estate as per Schedule C, annexed hereto .....	5,000	00
Value of Merchandise on hand, as per Schedule C, annexed hereto .....	1,000	00
Value of all other personal property, as per Schedule C .....		
Amount of Debts due to Petitioner, as per Schedule C, annexed hereto .....	3,000	00
Value of Homestead, as per Schedule C .....		
Value of all other property exempt from execution, as per Schedule C .....	1,000	00
Amount of Incumbrances on Real Estate as per Schedule C .....		
Amount of Incumbrances on Homestead, as per Schedule C .....		
Amount of Incumbrances on all other Personal Property exempt from Execution, as per Schedule C .....		
Amount of Incumbrances on other Personal Property, as per Schedule C .....		
	10,000	00
		10,000 00

JOHN BROWN, Petitioner.



## No. 458.—Schedule B.

*Referred to in the annexed Petition, forming a part thereof, containing the names and places of residence of his creditors, and the sum due to each, the true nature of the indebtedness or demand, the true cause and consideration thereof, and the time and place when and where said indebtedness accrued, and a statement of any existing pledge, lien, mortgage, judgment, or other security for the payment of the same.*

Names of Creditors.	Residence of Creditors.	Sum Due.	Nature of Indebtedness or Demand.	True Cause and Consideration for Indebtedness.	Time when Indebtedness Accrued.	Place where Indebtedness Accrued.	Statement of any existing Pledge, Lien, Mortgage, Judgment, or other security for the payment of the said debt.
Henry Brickwedel	City of San Francisco.	\$2000.00	Book Acc't.	Liquors and Groceries.	June 16, 1880.	City of San Francisco.	No security.

JOHN BROWN, Petitioner.

## No. 459.—Schedule C.

*Referred to in the annexed Petition, forming part thereof, containing an accurate description of all the estate, both real and personal, of the petitioner, including his homestead, if any, and all property exempt by law from execution, and where the same is situated, and all incumbrances thereon.*

Real Estate belonging to Petitioner, and incumbrances thereon.	Homestead of Petitioner, and incumbrances thereon.	Property of Petitioner exempt by law from execution, and where situated, and incumbrances thereon.	All other Personal Property of Petitioner, where situated, and all incumbrances thereon.
<p><i>Lot on the S. W. corner of Kearny and Washington streets, in the City and County of San Francisco, being twenty-five feet front, on Kearny street, with a uniform depth of one hundred feet on Washington street, with dwelling-house thereon.</i></p> <p><i>Value, \$5000.</i></p>	<p><i>The said lot and dwelling are a homestead duly acquired as provided by law, and the same free from all incumbrances.</i></p> <p><i>Value, \$5000.</i></p>	<p><i>The homestead aforesaid, one sewing machine, and clothing for self, wife, and nine children, with bedroom, dining, and kitchen furniture. No incumbrances.</i></p> <p><i>Value, \$1000.</i></p>	<p><i>All other personal property, except three thousand dollars in book accounts due for groceries and liquors sold, as appears from the books kept by me, made part hereof, and marked Exhibits "A," "B," and "C."</i></p>

JOHN BROWN, Petitioner.

**No. 460.—Oath to Schedules and Inventory.**

I, *John Brown*, do solemnly swear that the petition, schedules "A," "B," "C," and inventory, now delivered by me, contain a full, perfect, and true discovery of all the estate, real, personal, and mixed, goods and effects, to me in any way belonging; all such debts as are to me owing, or to any person or persons in trust for me, and all securities and contracts, and contracts whereby any money may hereafter become payable, or any benefit or advantage accrue to me, or to my use, or to any other person or persons in trust for me; that the schedule and inventory, respectively, contain a clear outline of the facts touching every known right of action against me by any one, and an outline of the facts touching all rights of action in my favor against any one; that I have no lands, money, stock, or estate, reversion or expectancy, beside that set forth in my schedule and inventory; that I have, in no instance, created or acknowledged a debt for a greater sum than I honestly and truly owe; that I have not, directly nor indirectly, sold, or otherwise disposed of, or concealed any part of my property, effects, or contracts; that I have not in any way compounded with my creditors, whereby to secure the same, or to receive, or to expect, any profit or advantage therefrom, or to defraud or deceive any creditor to whom I am indebted, in any manner. So help me God.

JOHN BROWN. [L.S.]

Sworn and subscribed before me, this *first* day of *December*, 1895.

FRED. P. STONE, Notary Public.

**No. 461.—Adjudication of Insolvency, etc.**

[TITLE OF COURT AND CAUSE.]

*John Brown*, having filed in this Court his petition, schedule, and inventory in insolvency, by which it appears that he is an insolvent debtor, the said *John Brown* is hereby declared to be insolvent. The Sheriff of the *City and County of San Francisco* is hereby directed to take possession of all the estate, real and personal, of the said *John Brown*, debtor, except such as may be by law exempt from execution, and of all his deeds, vouchers, books of account, and papers, and to keep the same safely until the appointment of an assignee of his estate. All persons are forbidden to pay any debts to the said insolvent, or to deliver any property belonging to him, or to any person, firm, or corporation, or association, for his use. The said debtor is hereby forbidden to transfer or deliver any property until the further order of this Court, except as herein ordered.

It is further ordered, that all the creditors of said debtor be and appear before the undersigned, Judge of the Superior Court of the *City and County of San Francisco*, in open Court, at the courtroom of said Court, in the *City and County of San Francisco*, on the *fourth* day of *January*, 1895, at *ten o'clock A.M.*, of that day, to



prove their debts and choose one or more assignees of the estate of said debtor.

It is further ordered, that the order be published in the *Daily Evening Bulletin*, a newspaper of general circulation, published in the *City and County of San Francisco*, as often as the said paper is published before the said day set for the meeting of creditors.

And it is further ordered, that, in the mean time, all proceedings against the said insolvent be stayed.

(Dated.)

A. A. SANDERSON,  
Judge of the Superior Court.

**No. 462.—Clerk's Receipt for Books, Vouchers, etc.**

[TITLE OF COURT AND CAUSE.]

Received, this day, of *John Brown*, an insolvent debtor, the following described books: *One day book, one cash book, one ledger.*

(Dated and signed.)

**No. 463.—Publisher's Affidavit of Publication, etc.**

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
*City and County of San Francisco.* } ss.

*G. K. Fitch*, of said *city and county*, being duly sworn, says: That he is a male citizen of the United States, of the age of eighteen years and upwards, and not interested in the matter of *John Brown*, an insolvent debtor;

That he is *one* of the publishers of the *Daily Evening Bulletin*, a newspaper of general circulation, printed and published in said *city and county*, and as such he has charge of all advertisements in said newspaper;

That a true, full, and correct copy of the annexed notice of the time and place of holding the meeting of creditors of said debtor, his adjudication in insolvency, and stay of proceedings as ordered by the Superior Court of the *City and County of San Francisco*, in the matter of said insolvency, on the *third* day of *December, 1895*, was published in said newspaper for *thirty-three* days successively next before the day of sale mentioned in said notice, and as often during the said period of *thirty-three* days as the said paper was printed, to wit: *on every day.*

(Subscribed and sworn to.)

**No. 464.—Clerk's Affidavit of Publication, etc.**

[TITLE OF COURT AND CAUSE.]

*John H. Harney*, being duly sworn, says: That he is *Deputy County Clerk* of the *City and County of San Francisco*; that on the *third* day of *December, 1895*, he served the adjudication of insolvency, stay of proceedings, and order of publication of notice to creditors, and notice to creditors, in the matter

of *John Brown*, an insolvent debtor, upon each of the following named creditors of said debtor, being all mentioned in his schedule; viz: *Henry Brickwedel*, by depositing copies of said adjudication of insolvency, stay of proceedings, order of publication, and notice to creditors, in the United States Post Office, at *San Francisco*, in the *City and County of San Francisco*, inclosed in an envelope, postage prepaid, and addressed one to each of said creditors, at his place of business, as stated in said schedule.

(Subscribed and sworn to.)

#### No. 465.—Clerk's Affidavit of Service, etc.

[TITLE OF COURT AND CAUSE.]

*John H. Harney*, being duly sworn, says: That he is *Deputy County Clerk* of said *city and county*, and was, at the time of making the service hereinafter mentioned and described, a male citizen of the United States of America, over eighteen years of age, and competent to be a witness in the within entitled matter, and has no interest therein; that he personally served the annexed adjudication of insolvency, stay of proceedings, and order of publication, on the *third day of December, 1895*, upon the within named creditor, *Henry Brickwedel*, by delivering to each of said persons personally, in said county, a full, true, and correct copy of said adjudication of insolvency, stay of proceedings, and order of publication.

(Subscribed and sworn to.)

#### No. 466.—Order Appointing Assignee.

[TITLE OF COURT AND CAUSE.]

WHEREAS, *John Brown* did on the *first day of December, 1895*, petition this Court to be discharged from all his debts in pursuance of the provisions of an Act of the Legislature of the State of *California*, entitled "An Act for the Relief of Insolvent Debtors, for the Protection of Creditors, and for the Punishment of Fraudulent Debtors," approved March 26, 1895, and the Court thereon, to wit: on the *first day of December, 1895*, made an order requiring the Creditors of said Insolvent to be and appear on the *fourth day of January, 1896*, before the said Court, at the court-house thereof, in said county, to choose an assignee of said estate, in pursuance whereof the said Clerk did cause to be published a notice calling them to appear in the said Court, on the said *fourth day of January, 1896*, on which day, it appearing and having been proved to the satisfaction of the Court that the said notice to the creditors of said insolvent has been *duly* published in pursuance of said order, and no creditors of said insolvent appearing.

Now, therefore, it is ordered, that *Thomas Varney* be and he is hereby appointed assignee of the estate of said debtor, upon

his filing a bond as provided by law in the sum of *ten thousand* dollars.

(Dated and signed.)

**No. 467.—Assignment by Clerk to Assignee.**

[TITLE OF COURT AND CAUSE.]

THIS INDENTURE, made this *fourth* day of *January*, 1895, between *W. A. Stuart*, Clerk of the Superior Court of the *City and County of San Francisco*, State of *California*, party of the first part, and *Thomas Varney*, Assignee of the estate of *John Brown*, an insolvent debtor, party of the second part, witnesseth:

That whereas, the said *John Brown*, on the *first* day of *December*, 1895, presented to the Honorable the Superior Court of the *City and County of San Francisco*, his petition in pursuance of the provisions of an Act of the Legislature of the State of *California*, entitled "An Act for the Relief of Insolvent Debtors, for the Protection of Creditors, and for the Punishment of Fraudulent Debtors," approved March 26, 1895; *praying to be discharged from all his debts*, and such proceedings having been thereupon had in due form of law, that on the *fourth* day of *January*, 1896, (the creditors, although duly summoned, not having attended on the day appointed for their meeting, and refusing to appoint one or more assignees), the said Court did, by order then duly made, appoint *Thomas Varney* assignee of the estate of said insolvent debtor, and to perform, in every respect, the functions of assignee; and for the faithful performance of said trust, the said assignee having filed a bond as ordered by the Court;

Now, therefore, in consideration of the premises, and of the benefit of said Act, and in pursuance of and in obedience to the above recited order and the said Act, the said party hereto, of the first part, hath granted, assigned, transferred, and set over, and by these presents doth grant, assign, transfer, and set over, unto the said party of the second part, his successor, successors, or assigns, all, and all manner of goods, chattels, debts, moneys, deeds, books, and papers, and all other things, property, estate, and effects of the said insolvent debtor, real, personal, and mixed, of what kind, nature, or quality soever, and wheresoever the same may be situated, and whether in possession, reversion, remainder, or in action, at the time of the commencement of the said proceedings in insolvency, except such property as is exempt by law from execution.

To have and to hold the same and every part and parcel thereof unto the said party of the second part, his successor, successors, and assigns, forever, to and for the uses and purposes in the said Act declared.

In witness whereof, *etc.*



**No. 468.—Proof of Debt Without Security.**

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
*City and County of San Francisco.* } 88.

At the *City and County of San Francisco, State of California*, on the *fourth* day of *January, 1896*, before me personally appeared *Henry Brickwedel*, a resident of the *City and County of San Francisco, State of California*, and who, after being duly sworn, says: That *John Brown*, the person by whom a petition for adjudication of insolvency is filed, was, at and before the filing of the said petition, and still is, justly and truly indebted to *affiant* in the sum of *three thousand* dollars, and no payments have been made thereon. This deponent says that he has not, nor has any person by his order, or to this deponent's knowledge or belief, for his use, had or received any manner of satisfaction or security whatever.

And this deponent further says, that the said claim was not procured for the purpose of influencing the proceedings in this matter; that no bargain or agreement, expressed or implied, has been made or entered into by or on behalf of this deponent to sell, transfer, or dispose of said claim, or any part thereof, against said debtor, or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of this deponent for assignee, or any action on the part of this deponent, or any other person, in the said proceedings, has been, is, or shall be in any way affected, influenced, or controlled. [Also state other facts, if any, within the act of 1895.]

(Subscribed and sworn to.)

I do hereby certify, that the within contained demand of *Henry Brickwedel* against *John Brown*, the insolvent debtor within named, was proved to my satisfaction on the *fourth* day of *January, 1896*, for the sum of *three thousand* dollars, and is allowed at that amount.

(Dated and signed.)

**No. 469.—Petition for Homestead Order.**

[TITLE OF COURT AND CAUSE.]

To the Honorable the Superior Court of the *City and County of San Francisco, State of California*:

The petition of *John Brown* respectfully shows: That on the *first* day of *December, 1895*, the said *John Brown* was, by the said Court, duly adjudged an insolvent debtor, under the provisions of the Insolvent Act of 1895 of the State of *California*.

That a certain quantity of land in his inventory and schedules on file, and hereinafter particularly described, together with the dwelling-house thereon, and its appurtenances, was selected by him, and was occupied by said insolvent debtor and his family

at the time he was adjudged an insolvent debtor, as a homestead; that since the said time of said adjudication, and up to this date, has remained in possession of said homestead.

That the same does not exceed in value the sum of five thousand dollars.

That said selection was made by said insolvent debtor, declaring his intention, in writing, to claim the same as a homestead; that said declaration stated the value of said land, and that he was married; that he was at the time of making such declaration residing with his family on said premises (said premises being particularly described in said declaration), and that it was his intention to use and claim the same as a homestead, which said declaration was signed by the said party making the same, and acknowledged and recorded as conveyances affecting real estate are required to be acknowledged and recorded.

That the said quantity of land hereinbefore referred to is situated in said *City and County of San Francisco*, State of *California*, and is bounded and particularly described as follows, to wit:

*Lot on the S. W. corner of Kearny and Washington streets, being twenty-five feet front on Kearny street with a uniform depth of one hundred feet on Washington street.*

Wherefore, your petitioner prays that the said homestead, consisting of said quantity of land, together with the dwelling house thereon and its appurtenances, be set apart for the use and benefit of said insolvent debtor.

And your petitioner will ever pray, *etc.*

(Dated and signed.)

#### No. 470.—Order Setting Apart Homestead.

[TITLE OF COURT AND CAUSE.]

*John Brown*, an insolvent debtor, having on the *twentieth* day of *January*, 1896, made application to this Court, by petition, for an order setting apart, for the use and benefit of said insolvent debtor, the homestead in said petition and hereinafter particularly described, together with the dwelling-house thereon and its appurtenances; and it duly appearing to said Court, from the papers on file, and other evidence, that the prayer of said petition should be granted;

It is hereby ordered, adjudged, and decreed, that all that certain lot, piece, or parcel of land situate, lying, and being in the *City and County of San Francisco*, State of *California*, and bounded and described as follows, to wit:

*Lot on the southwest corner of Kearny and Washington streets, being twenty-five feet front on Kearny street, with a uniform depth of one hundred feet on Washington street;*

Together with the dwelling-house thereon and its appurtenances, be, and the same is hereby set apart for the use and benefit of the said insolvent debtor; and that the same shall not be subject to be applied to the payment of his debts.

And it is further ordered, that a certified copy of this decree be duly recorded in the office of the County Recorder of said *City and County of San Francisco*.

(Dated and signed.)

**No. 471.—Petition for Order Setting Apart Personal Property.**

[TITLE OF COURT AND CAUSE.]

To the Honorable the Superior Court of the *City and County of San Francisco*, State of *California*:

The petition of *John Brown*, an insolvent debtor, respectfully shows: That on the *first* day of *December, 1895*, the said petitioner was, by the said Court, duly adjudged to be an insolvent debtor, under the provisions of the Insolvent Act of 1895 of the State of *California*. That your petitioner is advised and believes that the following personal property, belonging to said estate, and mentioned in his inventory and schedules, on file in this matter, is by law exempt from execution, to wit: *One sewing-machine, one set of bed-room furniture, one dining-room set, and one stove and dishes, and utensils for cooking, and the necessary clothing for nine children, and self and wife, all valued at about one thousand dollars.*

Wherefore, your petitioner prays that all of the said personal property may be set apart for the use and benefit of the said insolvent debtor.

And your Petitioner will ever pray, *etc.*

(Dated and signed.)

**No. 472.—Order Setting Apart Personal, etc.**

[TITLE OF COURT AND CAUSE.]

*John Brown*, an insolvent debtor, having this day made application to this Court, by petition, for an order setting apart, for the use of the said insolvent debtor, all personal property which is by law exempt from execution, and the matter having been duly considered;

It is hereby ordered that the following articles of personal property, to wit: *One sewing-machine, one set of bed-room furniture, one dining-room set, and one stove and dishes, and utensils for cooking, and the necessary clothing for nine children, and for petitioner and his wife, all valued at about one thousand dollars*, be and the same are hereby set apart for the use and benefit of the said insolvent debtor, and that the same shall not be subject to be applied to the payment of his debts.

(Dated and signed.)

**No. 473.—Petition for Discharge.**

[TITLE OF COURT AND CAUSE.]

To the Honorable the Superior Court of the *City and County of San Francisco*:

The petition of *John Brown* respectfully represents that on the



first day of December, 1895, he was duly declared and adjudged an insolvent, under the provisions of an Act of the Legislature of the State of California, entitled "An Act for the Relief of Insolvent Debtors, for the Protection of Creditors, and for the Punishment of Fraudulent Debtors"; that he duly surrendered all his property, and rights of property, and has fully complied with and obeyed all the orders and directions of the Court touching his insolvency aforesaid; and that he is ready to submit to any other and further examinations, orders, and directions which the Court may require.

Wherefore, your petitioner prays that he may be decreed by this Honorable Court to have a full discharge from all his debts, and that a certificate of discharge may be granted to him in accordance with law.

(Dated and signed.)

#### No. 474.—Order of Notice to Creditors.

[TITLE OF COURT AND CAUSE.]

*John Brown*, an insolvent debtor, having applied to this Court for a discharge from his debts;

It is hereby ordered that the Clerk of this Court give notice to all creditors who have proved their debts, to appear before this Court, at the court-room thereof, on the *nineteenth* day of *January*, 1896, at the hour of *ten* o'clock *A. M.*, and show cause, if any they have, why the said *John Brown* should not be discharged from all his debts, in accordance with the statutes in such cases made and provided.

It is further ordered, that notice of said application be given to the creditors by mail, and by publication for *four* weeks in the *Daily Evening Bulletin*, a newspaper published in said county.

(Dated and signed.)

#### No. 475.—Opposition to Discharge.

[TITLE OF COURT AND CAUSE.]

*John Brown*, claiming to be an insolvent debtor within the provisions of an Act of the Legislature of the State of California, entitled "An Act for the Relief of Insolvent Debtors, for the Protection of Creditors, and for the Punishment of Fraudulent Debtors," approved March 26, 1895, having filed his application for discharge from his debts; now comes *Henry Brickwedel*, a creditor of said insolvent, and opposes the discharge of said debtor, upon the following grounds: *The said John Brown, upon the fifteenth day of November, 1895, with intent to defraud his creditors, and being insolvent, did give to his wife one thousand dollars in gold coin, and neither the said money, nor any part thereof, has been surrendered to the assignee appointed by this Court.*

Wherefore, the said creditor prays that the said *John Brown* may not be discharged from his debts, as applied for by him.

(Dated and signed.)

STATE OF *California*,  
*City and County of San Francisco.* } ss.

*Henry Brickwedel*, being duly sworn, says that he is a creditor of said insolvent, that he has heard read the foregoing opposition, and that the same is true of his own knowledge, except as to those matters therein stated upon his information and belief, and that as to those matters he believes it to be true.

(Subscribed and sworn to.)

#### No. 476.—Oath of Insolvent.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
*City and County of San Francisco.* } ss.

*John Brown*, being duly sworn, says that he has applied to the Superior Court of the *City and County of San Francisco*, State of *California*, for discharge from his debts under the provisions of an Act of the Legislature of the State of *California*, entitled "An Act for the Relief of Insolvent Debtors, for the Protection of Creditors, and for the Punishment of Fraudulent Debtors," approved March 26, 1895; that he has not done, suffered, or been privy to any act, matter, or thing specified in the said Act as ground for withholding such discharge, if granted.

(Subscribed and sworn to.)

#### No. 477.—Certificate of Final Discharge.

[TITLE OF COURT AND CAUSE.]

Whereas, *John Brown* has been duly adjudged an insolvent, under the insolvent laws of this State, and appears to have conformed to all the requirements of the law in that behalf;

It is therefore ordered by the Court, that said *John Brown* be, and he hereby is, forever discharged from all debts and claims which by said insolvent laws are made provable against his estate, and which existed on the *first day of December, 1895*, on which the petition for adjudication was filed by him [or against him] excepting such debts, if any, as are by said insolvent laws excepted from the operation of a discharge in insolvency.

Given under my hand and seal, and signed by the Judge of the Court, and attested by the Clerk under seal.

#### No. 478.—Creditors' Petition in Insolvency.

[TITLE OF COURT AND CAUSE.]

To the Honorable the Superior Court of the *City and County of San Francisco*, State of *California*:

The petition of *Thomas Field*, *John Small*, *Charles Black*, *Oscar White*, and *Alphonso Redman*, respectfully shows: That petitioners are each residents of the State of *California*, and that *John*



Smith is indebted to your petitioners as follows: To *Thomas Field*, in the sum of \$500; in the sum of \$500 upon a promissory note for \$500, which said *John Smith* made and delivered to said *Thomas Field* on October 3, 1894, payable one day after date, without interest, to said *Thomas Field* or order. No part of said note has been paid, and it is all due from said *Smith* to said *Field*, who now holds and owns said promissory note; to *John Small* in the sum of \$1000; to *Charles Black*, in the sum of \$1500; to *Oscar White*, in the sum of \$2000; to *Alphonso Redman*, in the sum of \$2500; in all seven thousand five hundred dollars [stating each demand with all the particularity of a count in a complaint]. And neither of said petitioners has become a creditor of said *John Smith* by assignment within thirty days prior to the filing of this petition; and that each of said demands accrued in this State.

That the said *John Smith* was on the first day of August, 1895, insolvent; that on the day last aforesaid the said *John Smith* in the Superior Court of the City and County of San Francisco, in the action entitled *William Brown v. John Smith*, confessed judgment in favor of the said *William Brown*, who was then a creditor of the said *John Smith*, for the sum of one thousand dollars; that the said judgment was duly entered and the same now stands of record as entered; that the said *John Smith* is now a resident of the City and County of San Francisco, State of California [or that the debtor is about to depart from said place, with intent to defraud his creditors; or being absent, etc., in the usual form of alleging such matters in complaints, as provided in section 9 of the law of 1895].

Wherefore, your petitioners pray that the said Court issue its order to the said *John Smith*, to show cause at a time and place fixed by the Court, why he, the said *John Smith*, should not be adjudged an insolvent debtor, and the surrender of his estate be made for the benefit of his creditors, in the manner required of insolvent debtors.

(Dated and signed by petitioners.)

STATE OF CALIFORNIA, }  
City and County of San Francisco. } 83.

*Thomas Field*, *John Small*, *Charles Black*, *Oscar White*, and *Alphonso Redman*, being each severally sworn, doth say, on oath: That he has heard read the foregoing petition, and is acquainted with the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated upon information and belief, and that as to those matters he believes it to be true.

(Subscribed and sworn to.)

#### No. 479.—Creditor's Bond.

[TITLE OF COURT AND CAUSE.]

Whereas, *Thomas Field*, *John Small*, *Charles Black*, *Oscar White*, and *Alphonso Redman*, have filed a petition in the Su-



perior Court of the *City and County of San Francisco*, stating that *John Smith* is, and praying that he be declared, an insolvent debtor; now we, the undersigned, jointly and severally undertake, in the sum of *five hundred* dollars, that if the said *John Smith* should not be declared an insolvent debtor, the said petitioners will pay all costs and damages, including a reasonable attorney's fee, that the said debtor may sustain by reason of the filing of said petition.

Witness our hands, *etc.*

#### No. 480.—Order to Show Cause, *etc.*

[TITLE OF COURT AND CAUSE.]

Upon reading and filing the petition of *Thomas Field, John Small, Charles Black, Oscar White, and Alphonso Redman*, and good cause appearing therefor:

It is ordered, that *John Smith* be and appear before this Court, at the court-room thereof, in the *City and County of San Francisco*, on the *fifteenth* day of *August, 1895*, at *ten o'clock A. M.*, of said day, then and there to show cause, if any he can, why he should not be adjudged an insolvent debtor, and a surrender of his estate be made for the benefit of his creditors, in the manner required of insolvent debtors.

And it is further ordered, that until the further order of this Court, the said *John Smith* be, and he is hereby forbidden, to transfer any property, and is enjoined from collecting or receiving any debts; and the creditors of the said *John Smith* are hereby forbidden to pay any debt to the said *John Smith*, or to deliver to him any property belonging to him, or to any person, firm, or corporation for his use.

(Dated and signed.)

#### No. 481.—Adjudication of Insolvency (Involuntary).

[TITLE OF COURT AND CAUSE.]

The matter of the petition of *John Brown [and others]*, praying that *John Smith*, respondent herein, may be adjudged to be an insolvent debtor, coming on regularly to be heard this *tenth* day of *December, 1895*, *Simon Slug, Esq.*, appearing for said petitioners, and *Isiah Hydegood, Esq.*, appearing for said respondent; and it further appearing to the Court that the said respondent, after being duly and regularly served *with process and notice, as required by law*; and it further appearing to the Court that all of the allegations contained in said petition are true;

It is hereby ordered, adjudged, and decreed, that the said *John Smith* now is, and on the *third* day of *November, 1895*, the date of the filing of the petition aforesaid, was insolvent, within the true intent and meaning of an Act of the Legislature of the State of California, entitled "An Act for the relief of Insolvent Debtors, for the Protection of Creditors, and for the Punishment of Fraudu-

lent Debtors," passed March 26, 1895; and that the said insolvent debtor, respondent herein, is guilty of all the acts and things charged in the said petition, as therein alleged.

It is further ordered, that the said *John Smith* file in this Court, within three days, a verified schedule and inventory, in accordance with said Act.

It is further ordered, that the Sheriff of the County of *Sierra, California*, be and he is hereby ordered to take possession of all the estate, real and personal, of the said insolvent debtor, except such as may be by law exempt from execution, and all of his deeds, vouchers, books of account, and papers, and to keep the same safely until the appointment of an assignee herein.

All persons are forbidden to pay any debts to the said insolvent debtor, or to deliver any property belonging to said insolvent debtor, to him or to any person, firm, or corporation, or association, for his use.

The said debtor is hereby forbidden to transfer or deliver any property, until the further order of this Court, except as herein ordered.

It is further ordered, that all the creditors of said debtor, whose claims shall have been placed on file in the office of the Clerk of this Court, at least two days prior to the *tenth* day of *January, 1896*, be and appear before the Hon. *Frank A. Utche*, Judge of the Superior Court of the County of *Sierra*, in open Court, at the court-room of said Court, in the County of *Sierra*, on the said *tenth* day of *January, 1896*, at *ten o'clock A. M.* of that day, to prove their debts and choose an assignee of the estate of said debtor.

It is further ordered, that this order be published in *The Mountain Messenger*, a newspaper of general circulation, published in the County of *Sierra*, as often as the said newspaper is printed before the said day set for the meeting of creditors.

And it is further ordered, that in the mean time all proceedings against the said insolvent debtor be stayed.

(Dated and signed.)

### No. 482.—Proof of Debt Generally.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
City and County of *San Francisco*. } 88.

At the *City and County of San Francisco, State of California*, on the *sixteenth* day of *August, 1895*, before me personally appeared *Oscar White*, a resident of the *City and County of San Francisco, State of California*, and who, after being duly sworn and examined, at the time and place aforesaid, upon his oath, says that *John Smith*, the person against whom a petition for adjudication of insolvency was filed, was, at and before the filing of the said petition, and still is, justly and truly indebted to him

in the sum of *two thousand* dollars for goods sold and delivered to him on the first day of *July, 1895*, to wit: *One hundred sacks of wheat and one thousand sacks of barley*; and no action has been brought thereon. This deponent has received no security, no satisfaction whatsoever; that the claim was not procured for the purpose of influencing the proceedings in this matter; that no bargain or agreement, express or implied, has been made or entered into, by or on behalf of this deponent, to sell, transfer, or dispose of said claim, or any part thereof, against said insolvent, or to take or receive, directly or indirectly, any money, property or consideration whatever, whereby the vote of this deponent for assignee, or any action on the part of this deponent, or any other person in the said proceedings, has been, is, or shall be, in any way affected, influenced, or controlled; [and such other matters as may be necessary under Act of 1895].

(Subscribed and sworn to.)

STATE OF *California*,  
City and County of *San Francisco*. } ss.

I do hereby certify that the within contained demand of *Oscar White* against *John Smith*, the insolvent debtor within named, was proved to my satisfaction on the *sixteenth* day of *August, 1895*, for the sum of *two thousand* dollars and *ten* cents, and is allowed at that amount.

(Dated and signed.)

### No. 483.—Proof of Debt With Security.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
City and County of *San Francisco*. } ss.

At the *City and County of San Francisco*, State of *California*, on the *sixteenth* day of *August, 1895*, before me personally appeared *Thomas Field*, a resident of the *City and County of San Francisco*, and State of *California*, and who, after being duly sworn, says that *John Smith*, the person by whom a petition for adjudication of insolvency is filed, was, at and before the filing of the said petition, and still is, justly and truly indebted to *Thomas Field*, this affiant, for *five hundred* dollars loaned him on the *seventeenth* day of *June, 1894*, at the city of *Sacramento*, in the State of *California*, in the sum of *five hundred* dollars, and that no payments have been made thereon. This deponent says that he has not, nor has any person by his order, or to this deponent's knowledge or belief, for his use, received any security or satisfaction whatsoever, save and except the mortgage herein-after mentioned; that the claim was not procured for the purpose of influencing the proceedings in this matter; that no bargain or agreement, express or implied, has been made or entered into by or on behalf of this deponent to sell, transfer, or dispose of said claim, or any part thereof, against said debtor, or to take



or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of this deponent for assignee, or any action on the part of this deponent, or any other person in the proceedings under said statutes, has been, is, or shall be in any way affected, influenced, or controlled. *At the time of said loan of five hundred dollars the said John Smith gave affiant a mortgage upon the fifty-vara lot No. 7, in block No. 3172, in the Western Addition to the City and County of San Francisco. The said mortgage was duly recorded in the proper office, and is attached hereto and made part of this affidavit; and I do hereby release the said security.*

(Subscribed and sworn to.)

STATE OF California, }  
City and County of San Francisco. } ss.

I do hereby certify that the within contained demand of *Thomas Field* against *John Smith*, the insolvent debtor within named, with security, as in said deposition stated, was proved to my satisfaction on the *sixteenth* day of *August*, 1894, for the sum of *five hundred* dollars, and is allowed at that amount.

(Dated and signed.)

#### No. 484.—Choice of Assignees.

[TITLE OF COURT AND CAUSE.]

STATE OF California, }  
City and County of San Francisco. } ss.

In open Court, *September 29, 1895.*

MEMORANDUM. This being the day appointed by the Court for the meeting of creditors in the above matter, and of which due notice has been given in the *Daily Evening Bulletin*, and by special notice served personally, or through the mail, we, whose names are hereunder written, being the majority in amount of claims against said debtor aforesaid, and who have proven our debts, have chosen, and do hereby nominate and choose, *John Hale* to be the assignee of the said debtor's estate and effects, and we do desire that he may be appointed such assignee accordingly.

Names of Creditors above mentioned.	Residence of the same.	Amount of debt.
<i>Thomas Field</i> ....	<i>City and County of San Francisco</i> ....	\$ 500 00
<i>John Small</i> .....	" " " " " "....	1,000 00
<i>Charles Black</i> ....	" " " " " "....	1,500 00
<i>Oscar White</i> .....	" " " " " "....	2,000 00
<i>Alphonso Redman</i> .	" " " " " "....	2,500 00

I do hereby accept the said trust.

JOHN HALE, Assignee.

I, *Charles Halsey*, Judge of the said Court, do hereby approve of the said choice of assignee.

(Dated and signed.)

**No. 485.—Notice to Assignee.**

[TITLE OF COURT AND CAUSE.]

**To John Hale, Esq.:**

You are hereby notified, that at a meeting of the creditors of *John Smith*, an insolvent debtor, held in open Court in the Superior Court of the *City and County of San Francisco*, on the *twenty-ninth* day of *September, 1895*, you were elected assignee of the estate of said insolvent debtor; and, by order of the Court, you are hereby directed to file a bond to the State of California, with the Clerk of this Court, in the sum of *ten thousand dollars*, as fixed by this Court, with two or more sufficient sureties, to be approved by the Court, conditioned for the faithful performance of the duties devolving upon you as such assignee [*and such other matters as may be ordered by the Court or directed by law*].

The said bond shall be filed within *ten* days from the date hereof.  
(Dated and signed.)

**No. 486.—Bond of Assignee.**

[TITLE OF COURT AND CAUSE.]

KNOW ALL MEN BY THESE PRESENTS: That we, *Joseph Fox and Henry Harris*, are held and firmly bound unto the State of California in the sum of *ten thousand* dollars, *gold coin* of the United States of America, to be paid to the said State of California, or assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed and dated the *thirtieth* day of *September*, one thousand eight hundred and *ninety-five*.

The condition of the above obligation is such, that, whereas, in the Superior Court of the *City and County of San Francisco*, State of *California*, on the *twenty-ninth* day of *September, 1895*, *John Hale* was, by the creditors of *John Smith*, an insolvent debtor, duly elected assignee of his estate. Now, if the said *John Hale*, assignee, as aforesaid, shall faithfully perform the duties devolving upon him as such assignee, then the above obligation to be void; otherwise, to remain in full force and virtue.

(Signed, sealed, and delivered.)

**No. 487.—Assignment by Clerk to Assignee.**

[TITLE OF COURT AND CAUSE.]

THIS INDENTURE, made this *third* day of *October, 1895*, between *W. A. Stuart*, Clerk of the Superior Court of the *City and County of San Francisco*, State of *California*, party of the first part, and *John Hale*, assignee of the estate of *John Smith*, an insolvent debtor, party of the second part, witnesseth:

That, whereas, the *creditors of John Smith, an insolvent debtor*, having, on the *second* day of *August, 1895*, presented to the Honorable the Superior Court of the *City and County of San Fran-*

cisco, a petition praying that he might be declared an insolvent debtor, in pursuance of the provisions of an Act of the Legislature of the State of California, entitled an "Act for the Relief of Insolvent Debtors, for the Protection of Creditors, and for the Punishment of Fraudulent Debtors," approved March 26, 1895, and such proceedings having been thereupon had in due form of law, that on the *twenty-ninth* day of *September, 1895*, the creditors having been duly summoned, and having attended on the day appointed for their meeting, and having appointed *John Hale*, the party of the second part, assignee of the estate of said insolvent debtor; and, for the faithful performance of said trust, the said assignee having filed a bond *in the sum of ten thousand dollars*, as ordered by the Court;

Now, therefore, in consideration of the premises and of the benefit of said Act, and in pursuance of, and in obedience to, the above recited order and the said Act, the said party hereto, of the first part, hath granted, assigned, transferred, and set over, and by these presents doth grant, assign, transfer, and set over, unto the said party of the second part, his successor, successors, or assigns, all, and all manner of goods, chattels, debts, moneys, deeds, books, and papers, and all other things, property, estate, and effects of the said *John Smith*, real, personal, and mixed, of what kind, nature, or quality, soever, and wheresoever the same may be situated, and whether in possession, reversion, remainder, or in action, at the time of the commencement of the said proceedings in insolvency, except such property as is exempt by law from execution.

To have and to hold the same, and every part and parcel thereof unto the said party of the second part, his successor, successors, and assigns, forever, to and for the uses and purposes in the said Act declared.

In witness whereof, *etc.*

W. A. STUART, Clerk.

#### No. 488.—Petition for Sale of Property.

[TITLE OF COURT AND CAUSE.]

To the Honorable the Superior Court of the *City and County of San Francisco*:

The petition of *John Hale* respectfully shows: That he is the duly appointed, qualified, and acting assignee of the estate of *John Smith*, an insolvent debtor, now pending in said Court; that as such assignee he has taken possession of all the estate described in the petition, schedule, and inventory of said insolvent; that in order to pay the debts of said insolvent it is necessary to sell all his estate vested in petitioner as such assignee.

Wherefore, petitioner prays for an order of this Court, authorizing him to sell at *public auction* all the estate, real and personal, vested in him as such assignee, upon the following terms, to wit:



for cash. And upon such sale to execute to the purchaser the necessary conveyances and bills of sale.

The following is a description of the real estate belonging to said insolvent debtor's estate, situated in the *City and County of San Francisco*, State of *California*, and bounded and described as follows, to wit:

[Description by metes and bounds.]

(Dated and signed.)

### No. 489.—Assignee's Notice of Appointment.

[TITLE OF COURT AND CAUSE.]

To whom it may concern: The undersigned hereby gives notice of his appointment as assignee of the estate of *John Smith*, an insolvent debtor of the *City of San Francisco*, in the *City and County of San Francisco*, in the State of *California*, and who was, to wit: on the *fifteenth* day of *August, 1894*, adjudged an insolvent debtor, upon the petition of his creditors, by the Superior Court of the *City and County of San Francisco*, State of *California*.

(Dated and signed.)

### No. 490.—Petition to Sell Perishable Property.

[TITLE OF COURT AND CAUSE.]

*John Hale*, the assignee of the estate of *John Smith*, an insolvent debtor, petitions this Court for an order to sell, immediately, the following described property belonging to the said estate, viz:

[Description.]

Petitioner states that said property is of a perishable nature, and is liable to deteriorate in value—is disproportionately expensive to keep, and it will be for the best interests of the said estate to sell the said property immediately. *That a sale of said property at private sale will realize more than at public auction.*

Wherefore, petitioner prays for an order to sell all, or any part of, said property either at public auction or at private sale, as he may deem best for the interests of said estate.

(Dated and signed.)

STATE OF *California*, }  
*City and County of San Francisco.* } ss.

*John Hale*, being duly sworn, says: That he is the assignee of the estate of *John Smith*, an insolvent debtor; that he has heard read the foregoing petition, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated upon his information and belief, and that as to those matters he believes it to be true.

(Subscribed and sworn to.)

**No. 491.—Order Fixing Day, etc.**

[TITLE OF COURT AND CAUSE.]

*John Hale*, the assignee of the estate of *John Smith*, an insolvent debtor, having filed in this Court his petition praying for an order to sell all the property of said estate at private sale;

It is hereby ordered, that *Monday*, the *tenth* day of *November*, 1895, at the court-room of this Court, in the *City and County of San Francisco*, at the hour of *ten o'clock A. M.*, be set for the hearing of said petition; and that this order be published in the *Daily Evening Bulletin*, a newspaper of general circulation, published in the *City and County of San Francisco*, as often as said paper is published before the said day set for the hearing of said petition.

(Dated and signed.)

**No. 492.—Order to Sell Perishable Property.**

[TITLE OF COURT AND CAUSE.]

Upon reading and filing the petition of *John Hale*, the assignee of the estate of *John Smith*, an insolvent debtor, praying for an order to sell immediately at private sale or public auction, as he may deem best for the interests of said estate, certain property described in said petition; and it appearing to the Court that it is for the best interests of said estate that said property should be immediately sold, as prayed for in said petition: It is ordered that the said assignee immediately sell said property either at private sale or at public auction, with or without notice, as he may deem best for the interests of said estate.

(Dated and signed.)

**No. 493.—Order for Sale of Property.**

[TITLE OF COURT AND CAUSE.]

Upon reading and filing the petition of *John Hale*, assignee of the estate of *John Smith*, an insolvent debtor, praying for an order to sell *certain real estate*, belonging to said estate, and it appearing to the Court that it is necessary to sell *all the real estate* of the said insolvent debtor, vested in the assignee;

It is ordered that the said assignee sell at public auction, giving *ten* days previous notice thereof by publication in the *Daily Evening Bulletin* of the time, place, and conditions of said sale, all the said real estate; that said property be sold to the highest bidder for *cash*; that if the said property be not disposed of upon the day fixed in the said notice of sale, then the said sale may be continued from day to day until all said property is disposed of.

The following is a description of the real estate belonging to said insolvent debtor's estate, which is ordered to be sold: Situated in the *City and County of San Francisco*, State of *California*, and bounded and described as follows, to wit:

[Description.]

Upon any sale being made, the said assignee shall execute to the purchaser all necessary conveyances and bills of sale.

(Dated and signed.)

#### No. 494.—Petition for Leave to Compound.

[TITLE OF COURT AND CAUSE.]

To the Honorable the Superior Court of the *City and County of San Francisco*:

The petition of *John Hale* respectfully shows: That he is the assignee of the estate of *John Smith*, an insolvent debtor, now pending in this Court, and was appointed assignee by *the creditors of said insolvent* in this Court; that the following named persons and firms are indebted to said estate in the sums set opposite to their names, viz.:

<i>Henry Slack</i> .....	\$1000 00
<i>John Shirk</i> .....	500 00

That *the said debtors have no property out of which the said sums could be made upon execution; but they each offer to pay twenty-five cents on the dollar of their indebtedness, in full discharge; and it is therefore for the best interests of said estate to compound said debts with said debtors, by accepting less than the several sums due, and in full payment, and upon payment of the sums agreed upon, to discharge said debtors from said debts.*

Wherefore, petitioner prays for an order authorizing him to compound with said debtors, and upon payment of the sum agreed upon, to discharge all demands of said estate against each of said persons.

(Dated and signed.)

#### No. 495.—Order to Compound.

[TITLE OF COURT AND CAUSE.]

Upon reading and filing the petition of *John Hale*, assignee of the estate of *John Smith*, an insolvent debtor, praying for an order to compound with certain debtors of said estate, and it appearing to the Court that it is for the best interests of said estate for such settlement to be made as prayed for in said petition, it is ordered that the prayer of said petition be granted, and that the said assignee be, and he is hereby, granted full power and authority to compound with said debtors upon such terms and conditions as he may deem best for said estate.

(Dated and signed.)

#### No. 496.—Assignee's Complaint.

[TITLE OF COURT AND CAUSE.]

To the Honorable the Superior Court of the *City and County of San Francisco*:

The undersigned, assignee of the estate of *John Smith*, an in-



solvent debtor, complains of *Bugbee Baldwin*, and for cause of complaint alleges: That the said *Bugbee Baldwin* has, as complainant is informed and believes, *in his possession one gold watch of the value of two hundred dollars, which is the property of the said insolvent, which he refuses to deliver to the undersigned, assignee of said estate.*

Wherefore, complainant prays that the said *Bugbee Baldwin* may be cited to appear before said Court, and may be then examined under oath upon the matters and things herein complained of.

(Dated and signed.)

STATE OF California, }  
City and County of San Francisco. } ss.

*John Hale*, being duly sworn, says, that he is the assignee of the estate of *John Smith*, an insolvent debtor; that he has heard read the foregoing complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated upon his information and belief, and that as to those matters he believes it to be true.

(Subscribed and sworn to.)

#### No. 497.—Order for Examination.

[TITLE OF COURT AND CAUSE.]

Upon reading and filing the complaint of *John Hale*, assignee of the estate of *John Smith*, an insolvent debtor; stating that *Bugbee Baldwin has in his possession certain property in said complaint described, the property of said estate; and has knowledge of other property of said estate.*

It is ordered that the said *Bugbee Baldwin* appear before this Court in open Court, on the *twentieth* day of *December, 1895*, at the court-room of this Court, in the *City and County of San Francisco*, at the hour of *ten o'clock A. M.*, or as soon thereafter as the matter can be heard, then and there to be examined, under oath, touching all the matters and things in said complaint complained of; and to then and there render a full account, upon oath, of any property of said debtor you may have knowledge or possession of, or which has come into your possession in trust for the said debtor, or which belongs to said estate.

(Dated and signed.)

#### No. 498.—Order to Disclose Property.

[TITLE OF COURT AND CAUSE.]

It appearing from the examination of *Bugbee Baldwin*, had in open Court upon the *twentieth* day of *December, 1895*, that he has *knowledge of property of value belonging to said estate:* It is ordered that the said *Bugbee Baldwin* immediately disclose his knowledge thereof to *John Hale*, the assignee of the estate of *John Smith*, an insolvent debtor.

(Dated and signed.)

**No. 499.—Order of Commitment—Refusal to Appear.**

[TITLE OF COURT AND CAUSE.]

Whereas, upon the *tenth* day of *October*, 1895, *John Hale*, assignee of the estate of *John Smith*, an insolvent debtor, filed his complaint in this Court, charging that *Charles Coffman* had property in his possession belonging to said estate of the value of one thousand dollars: Wherefore, this Court made its order, directing the said *Charles Coffman* to appear before this Court, upon a day stated in said order, then and there to be examined, under oath, touching all the matters and things in said complaint complained of, and hereinabove set forth. And this Court having, on the *tenth* day of *October*, 1895, made its order, directing the said *Charles Coffman* to submit to an examination relating to said matters, and to answer interrogatories touching the matters of the said complaint. And the said *Charles Coffman*, after having been duly cited, refuses to appear and submit to an examination, as aforesaid, or to answer such interrogatories: It is therefore ordered, that the said *Charles Coffman* be committed to the County Jail of the *City and County of San Francisco*, State of *California*, there to remain in close custody until he submit to the said order of Court, or is discharged according to law.

(Dated and signed.)

**No. 500.—Order of Commitment—Refusal to Disclose.**

[TITLE OF COURT AND CAUSE.]

Whereas, upon the *twentieth* day of *December*, 1895, *John Hale*, assignee of the estate of *John Smith*, an insolvent debtor, filed his complaint in this Court, charging that *Bugbee Baldwin* has knowledge of property of value belonging to said estate: Whereupon this Court made its order, directing the said *Bugbee Baldwin* to appear before this Court upon a day stated in said order, then and there to be examined, under oath, touching all the matters and things in said complaint complained of, and hereinabove set forth; and this Court having, on the *twentieth* day of *December*, 1895, made its order, directing the said *Bugbee Baldwin* to immediately disclose his knowledge of said matters to *John Hale*, the assignee of said insolvent debtor. And it appearing to the Court, after full examination of the matter, that the said *Bugbee Baldwin* has neglected and refused, and still does neglect and refuse, to obey the said last aforesaid order: It is therefore ordered, that the said *Bugbee Baldwin* be committed to the County Jail of the *City and County of San Francisco*, State of *California*, there to remain a prisoner until the said order is complied with, or until he be discharged according to law.

(Dated and signed.)

**No. 501.—Order on Assignee to Report.**

[TITLE OF COURT AND CAUSE.]

Good cause having been shown therefor: Upon the petition and motion of *Oscar White* and *Alphonso Redman*, two creditors of the said estate;

You are hereby ordered to file your report and account herein, showing the amount of moneys received and paid out by you as assignee of said estate (and also a general report of the condition of the estate, and the probable amount that may be realized therefrom), up to and including the *first day of July, 1895*. The said account to be filed on or before the *fifteenth day of June, 1895*.

(Dated and signed.)

**No. 502.—Assignee's Exhibit.**

[TITLE OF COURT AND CAUSE.]

*John Hale*, assignee of the estate of *John Smith*, an insolvent debtor, herewith exhibits to the Court and the creditors of said estate a just and true account of all his receipts and payments on account of said estate; and a statement of the property of said estate outstanding, with the cause of its outstanding, and a schedule of debts or claims yet undetermined, and a statement of what sum remains in his possession.

DR. TO CASH.

From sales of property. \$10,000

---

\$10,000

CR. BY CASH.

Paid dividend No. 1. \$ 9,000

Paid expenses as per  
vouchers on file.. 1,000

---

\$10,000

Property  
Outstanding.

One ship, the *Dreadnaught*,  
fully described in the  
schedules.

Cause  
of its Outstanding.

On a voyage to *Cork*,  
*Ireland*.

Debts and Claims  
Outstanding.

None.

(Dated and signed.)

STATE OF *California*,  
City and County of *San Francisco*. } ss.

*John Hale*, being duly sworn, says: That the foregoing exhibit is just and true, to the best of his knowledge and belief.

(Subscribed and sworn to.)

**No. 503.—Account of Assignee.**

[TITLE OF COURT AND CAUSE.]

Now comes *John Hale*, the assignee of the estate of *John Smith*, an insolvent debtor, and files this, the final account of his administration of said estate.



He was appointed assignee on the *twenty-ninth* day of *September, 1895*, and immediately entering upon the discharge of his duties, he received from *John Smith*, as such assignee, all the personal property described in schedule "A," attached hereto; and also all the real estate described in schedule "B," attached hereto; that at the dates given in said schedules "A" and "B," he sold the property therein described, and for the sums therein stated; that *all the property of said estate* has been disposed of; that schedule "C" is a summary statement of the cash received and expended, and expenses to be paid, with the balance on hand; that schedule "D" is the list of creditors proving their claims, when proven, with the residence and amounts proven and allowed; that after paying all expenses of administration, there will remain on hand *nine thousand dollars*; that out of the said sum of *nine thousand dollars* each creditor will be entitled to receive the sum of *fifty cents* upon each dollar due him from the said estate, and no more.

Wherefore, the said assignee prays for an order of this Court declaring a dividend of *fifty cents* upon each dollar of claims proven as aforesaid, and that upon such payment the said assignee be discharged from his trust; that he makes schedules "A," "B," "C," and "D," part of this petition and account, and they are herein referred to.

*Clement Smith,*  
Attorney for Assignee.

*JOHN HALE*, Assignee.

#### SCHEDULE A.

Date.	Personal Property Received.	Date of Sale.	Cash Received.
	<i>One hundred shares of Union Con....</i>	<i>Dec. 1, 1894..</i>	<i>\$1000 00</i>
"	" " " <i>Savage.....</i>	" " "	<i>5000 00</i>
"	" " " <i>Pictou.....</i>	" " "	<i>4000 00</i>
	<i>Ship Dreadnaught not sold .....</i>		

#### SCHEDULE B.

Date.	Real Estate Received.	Date of Sale.	Cash Received.
	<i>No real estate received.....</i>		

#### SCHEDULE C.

Date.	Summary of Cash Received and Expended.	Dr.	Cr.
<i>1895.</i>	<i>From sales of stock .....</i>	<i>\$10,000 00</i>	
	<i>Cash paid out and expended in dividends. ....</i>		<i>\$9000 00</i>
	<i>Cash paid out and expenses of estate.</i>		<i>1000 00</i>

## SCHEDULE D.

When Proven and Allowed.	Name of Creditor.	Residence.	Amount.
August 16, 1895.	Oscar White....	San Francisco...	\$2,000 00
" " "	Thomas Field...	" "	500 00
" " "	John Small.....	" "	1,000 00
" " "	Charles Black...	" "	1,500 00
" " "	Alphonso Redman	" "	2,500 00
" " "	James Macdonald.	" "	20,000 00

STATE OF California, }  
City and County of San Francisco. } ss.

John Hale, being duly sworn, deposes and says: That he is the assignee of the estate of an insolvent debtor; that he has read the foregoing petition, account, and schedules "A," "B," "C," and "D," and knows the contents thereof, and that the same are true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters, he believes the same to be true.

(Subscribed and sworn to.)

## No. 504.—Assignee's Notice of Filing Account.

[TITLE OF COURT AND CAUSE.]

You are hereby notified that on the *third* day of *August*, 1895, the undersigned assignee of the estate of *John Smith*, an insolvent debtor, filed in the Superior Court of the *City and County of San Francisco*, State of *California*, his *final* account, as such assignee; and you are further notified that on the *tenth* day of *September*, 1895, in open Court, at the court-room of said Court, at the hour of *ten o'clock A. M.*, or as soon thereafter as the matter can be heard, he, the said assignee, will apply to said Court for a settlement of his said account, and for a discharge from all liability as such assignee.

(Dated and signed.)

## No. 505.—Affidavit of Assignee.

[TITLE OF COURT AND CAUSE.]

John Hale, assignee of the estate of *John Smith*, an insolvent debtor, being duly sworn, says: That on the *third* day of *August*, 1894, he notified, by mail, all the creditors of the said estate who have proved their claim, that on the *third* day of *August*, 1894, he had filed in the Superior Court of the *City and County of San Francisco* his *final* account as such assignee, and that he would, on the *tenth* day of *September*, 1894, in open Court, at the court-room of said Court, at the hour of *ten o'clock A. M.*, or as soon thereafter as the matter could be heard, apply to said Court for a settlement of his said account, and for a discharge from all liability as assignee. The said notices were deposited in the United States Post Office at *San Francisco*, in the *City and County of San*

*Francisco, State of California*, inclosed in envelopes, with the postage thereon paid, and were addressed, one to each of said creditors whose claims have been proved, at their several places of residence. (Subscribed and sworn to.)

**No. 506.—Objection to Assignee's Account.**

[TITLE OF COURT AND CAUSE.]

*John Hale*, the assignee of the estate of *John Smith*, an insolvent debtor, having, on the *third* day of *August, 1895*, filed in this Court his *final* account as assignee, the undersigned, a creditor of said estate, hereby excepts to the said account, and contests the same, upon the following grounds: *The said assignee has charged nine thousand dollars in his said account as expenses of administration, whereas the total expenses have been only five hundred dollars.* Wherefore, the said creditor prays that the said account be not allowed.

(Dated and signed.)

**No. 507.—Order Allowing Assignee's Account.**

[TITLE OF COURT AND CAUSE.]

*John Hale*, the assignee of the estate of *John Smith*, an insolvent debtor, having filed in this Court his final account, and due notice of the filing of the said account having been given to all the creditors whose claims have been proven, and *James Macdonald* having filed his objections to said account, and the said account having been examined in open Court upon the issues raised by the objections; and evidence having been taken, and the said account having been found correct in every particular, it is ordered that the said account be, and the same is, hereby settled and allowed, and the said assignee is ordered to immediately pay to each of the creditors of said estate entitled thereto, in accordance with his said account, a dividend of *one per cent. upon the claims proved.* And upon compliance with this order, the said assignee shall be discharged from all liability as assignee to any creditor of the said insolvent.

(Dated and signed.)

**No. 508.—Final Discharge of Assignee.**

[TITLE OF COURT AND CAUSE.]

*John Hale*, the assignee of the estate of *John Smith*, an insolvent debtor, having proved to the satisfaction of the Court that he has fully complied with the order of this Court, auditing and allowing his *final* account, and declaring a dividend to the creditors of said estate whose claims have been proved. It is hereby ordered, that the said assignee be, and is hereby, discharged from his said office of assignee, as aforesaid, free from all liability as such assignee to any creditor of said insolvent.

(Dated and signed.)



**No. 509.—Affidavit and Order for Examination.**

[TITLE OF COURT AND CAUSE.]

*Samuel Davis*, being duly sworn, says: That he is *assignee* of the estate of *John Williams*, an insolvent debtor, which estate is now pending in this Court; that *Ferdinand Rees* has property of the said insolvent, *which he has refused, upon demand, to deliver to affiant, to wit: one thousand dollars in gold coin.*

Wherefore, affiant prays that the said *Ferdinand Rees* may be examined under oath touching the said matter.

(Subscribed and sworn to.)

STATE OF *California*,  
City and County of *San Francisco*. } ss.

On reading the foregoing affidavit, and it satisfactorily appearing to me therefrom that *Ferdinand Rees* has property which he unjustly refuses to deliver to the assignee of said estate, and the property of said estate, and that it is a proper case for this order, and on application of *Samuel Davis*, I, the undersigned, Judge of the Superior Court of the City and County of *San Francisco*, State of *California*, do hereby order and require the said *Ferdinand Rees* personally to be and appear before me at my chambers, in the City and County of *San Francisco*, on the *twentieth* day of *February*, 1895, at ten o'clock in the forenoon of that day, to answer concerning said property; and that a copy of said affidavit and of this order be previously served upon said *Ferdinand Rees* at least five days previous to said date.

(Dated and signed.)

**No. 510.—Petition for Order on Assignee.**

[TITLE OF COURT AND CAUSE.]

To the Honorable the Superior Court of the City and County of *San Francisco*, State of *California*:

The petition of *George Brown*, *Samuel Davis*, and *David Samuels*, creditors of *John Williams*, an insolvent debtor, respectfully states: That *John Davis*, the assignee of the said estate, has refused and neglected, and does still refuse and neglect, to pay to the creditors of the said estate a dividend of ten cents on each dollar of their claims, as ordered by this Court, on the ninth day of *January*, 1895, and when the said order was made the assignee had, and now has, sufficient funds on hand to pay said dividend.

Wherefore, they pray for an order of this Court, directing the said assignee to pay the said dividend to the said creditors on or before the first day of *February*, 1895, or to show good cause why he refuses to obey the order of this Court, and failing to do which, that he be discharged as assignee.

(Dated and signed.)

**No. 511.—Order Removing Assignee.**

[TITLE OF COURT AND CAUSE.]

Whereas, this Court having, on the *ninth* day of *January*, 1895, upon petition and motion of the creditors of the estate of *John Williams*, an insolvent debtor, ordered *John Davis*, the assignee of said estate, to *forthwith pay to the creditors of the said estate a dividend of ten cents on each dollar of the indebtedness of said estate proved on or before the first day of February, 1895*; and the said time having elapsed, and the said assignee having failed to obey the said order, and no good cause being shown why he has failed to obey the said order, it is hereby ordered that the said *John Davis* be, and he is hereby, removed from his office as assignee, as aforesaid, and *Samuel Davis* is hereby appointed assignee of said estate in his stead, upon his filing a bond within *three* days from this date to the State of *California*, with two sureties, to be approved by this Court, in the sum of *ten thousand* dollars, as provided by law. And the said *John Davis*, late assignee, is hereby ordered, upon the approval of said bond, to deliver to the said *Samuel Davis*, assignee, all the funds, property, books, vouchers, and securities belonging to the said insolvent, without charging or retaining any commission or compensation for his personal services.

(Dated and signed.)

**No. 512.—Petition for Removal of Assignee.**

[TITLE OF COURT AND CAUSE.]

To the Honorable the Superior Court of the *City and County of San Francisco*:

The undersigned creditor of *William Jones*, an insolvent debtor, respectfully represents: That *Henry Molineux* was, on the *first* day of *January*, 1895, by this Court duly appointed assignee of the estate of *William Jones*, an insolvent debtor, and the said assignee duly qualified and took possession of the estate of said insolvent.

That the accounts of said assignee have not been settled and the estate completed. That on the *first* day of *November*, 1895, this Court ordered the said assignee to file his account within *five* days from said first day of *November*; that more than *five* days have elapsed and the said assignee has not filed his account.

Wherefore, petitioner prays that the said assignee may be removed from his office of assignee, as aforesaid, and another assignee appointed in his stead.

(Dated and signed.)

**No. 513.—Order to Show Cause, etc.**

[TITLE OF COURT AND CAUSE.]

Upon reading and filing the petition of *Hiram Wilson*, one of the creditors of the estate of *William Jones*, an insolvent debtor, pray-

ing that *Henry Molineux*, assignee of said estate, be removed, and said petition showing good cause therefor: It is ordered that the said assignee, as aforesaid, show cause, if any he has, before this Court, on *Monday*, the *first* day of *December*, 1895, at the hour of *ten* o'clock, or as soon thereafter as counsel can be heard, why he should not be removed and another assignee appointed in his stead, as prayed for in said petition.

(Dated and signed.)

#### No. 514.—Order Removing Assignee.

[TITLE OF COURT AND CAUSE.]

The petition of *Hiram Wilson*, a creditor of the estate of *William Jones*, an insolvent debtor, coming on this day to be heard, and it appearing that the said assignee has refused to file his account, as ordered by this Court: It is ordered that *Henry Molineux*, the assignee of said estate, be, and he is hereby, removed, and *Hiram Wilson* is hereby appointed assignee of said estate in his stead, upon his filing a bond within *ten* days to the State of *California* in the sum of *one thousand* (1000) dollars, with *two* good sureties, to be approved by this Court; and upon the approval of said bond, the said *Henry Molineux* is ordered to deliver to the said *Hiram Wilson* all the property of said estate in his possession or under his control.

(Dated and signed.)

#### No. 515.—Resignation of Assignee.

[TITLE OF COURT AND CAUSE.]

To the Honorable the Superior Court of the *City and County of San Francisco*, State of *California*:

I hereby resign as assignee of the estate of *John A. Reichart*, an insolvent debtor, now pending in said Court.

(Dated and signed.)

#### No. 516.—General Affidavit of Publication.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
*City and County of San Francisco*. } ss.

*Fred. McAlta*, of the said *city and county*, being duly sworn, deposes and says, that he is over eighteen years of age; that he has no interest whatsoever in the matter mentioned herein, nor a party thereto, and that he is the *Clerk* of the printers and publishers of the *Daily Alta California*, a newspaper of general circulation published in said *city and county*, and has charge of all the advertisements in said newspaper, and that the notice to creditors in the matter of the estate of *John A. Reichart*, an insolvent debtor, of which the following is a printed copy:

[Copy.]



Has been published in the above named newspaper, commencing *December 3, 1894*, and ending *January 4, 1895*, and further sayeth not.

(Subscribed and sworn to.)

**No. 517.—Affidavit of Service by Mail.**

[TITLE OF COURT AND CAUSE.]

STATE OF *California*, }  
*City and County of San Francisco.* } ss.

*John H. Harney*, being duly sworn, deposes and says, that he is *Deputy County Clerk* of the *City and County of San Francisco*; that on the *fifth* day of *January, 1895*, deponent served notice to creditors of the application of *John A. Reichart*, an insolvent debtor, to be discharged from all his debts, on file in said Court, by depositing such notices, on said date, in the Post Office at the *City and County of San Francisco*, properly inclosed in envelopes, addressed one to each of the creditors of said insolvent who have proved their debts, at their several places of residence, and prepaying the postage thereon.

(Subscribed and sworn to.)

**No. 518.—Subpoena—Insolvency.**

[TITLE OF COURT AND CAUSE.]

The People of the State of *California* send Greeting to *J. Crossman*:

We command you, that all and singular business and excuses being set aside, you appear and attend before our said Superior Court of the *City and County of San Francisco*, State of *California*, at the court-room of said Court, in the *City and County of San Francisco*, on the *twenty-ninth* day of *April, 1895*, at *ten o'clock A. M.*, then and there to testify in the above stated matter now pending in said Superior Court, on the part of *the estate*, and for a failure to attend you will be deemed guilty of contempt of Court, and liable to pay all losses and damages sustained thereby to the parties aggrieved, and forfeit one hundred dollars in addition thereto.

Witness, *etc.*

## III. SUPERIOR COURT—CIVIL.

## No. 519.—Affidavit of Service by Mail.

IN THE SUPERIOR COURT of the *City and County of San Francisco.*

Richard F. Ryan,  
Plaintiff,  
v.  
David Calderwood,  
Defendant.

STATE OF *California*,  
*City and County of San Francisco.* } ss.

*James Mee*, being duly sworn, deposes and says: That he is an attorney at law, and is the attorney of record for the above named plaintiff in the above entitled cause, and that he resides at the *City and County of San Francisco*, in the State of *California*; that *E. F. Wristen* is the attorney of record for the above named defendant in said cause, and that he, said *E. F. Wristen*, resides at *Redwood City, County of San Mateo*; in said State [or that his office is at No. 534 *Montgomery street, Redwood City*]; that in each of said two places there is a United States Post Office, and between said two places there is a regular daily communication by mail; that on the nineteenth day of *August, 1894*, deponent served a true copy of the amended complaint herein on said *E. F. Wristen*, the said attorney of said defendant, by depositing such copy of Complaint, on said date, in the Post Office at said *City and County of San Francisco* aforesaid, properly inclosed in an envelope, addressed to said *E. F. Wristen*, attorney at law, at *Redwood City, San Mateo County*, said place of residence, and prepaying the postage thereon.  
(Subscribed and sworn to.)

NOTE 1.—Cal. C. C. P., sec. 1013. In case of service by mail, the notice or other paper must be deposited in the post office, addressed to the person on whom it is to be served, at his office or place of residence, and the postage paid. The service is complete at the time of the deposit, but if within a given number of days after such service a right may be exercised, or an act is to be done by the adverse party, the time within which such right may be exercised or act be done is extended one day for every twenty-five miles distance between the place of deposit and the place of address; such extension, however, not to exceed ninety days in all.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 3519.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 4890.

NOTE 4.—In Montana the same, except the last line. C. C. P., sec. 1833.

NOTE 5.—In Utah the same. Comp. Laws, sec. 3677.

NOTE 6.—In North and South Dakotas the same. Comp. Laws, sec. 5329.

NOTE 7.—In Wyoming such service is made as is required for the service of summons. Rev. Stats., secs. 2435, 2512. See Summons.

NOTE 8.—In Washington the same as in California. Hill's Stats., sec. 322.

NOTE 9.—In Oregon the same. Hill's Laws, secs. 528-29, p. 470.

NOTE 10.—In Colorado the same form will be sufficient in all cases when notice may be given by mail. C. P., sec. 377.

NOTE 11.—In Arizona the same as in Colorado when allowed by law. There appears to be no statute regulating such notice, except what is found in Rev. Stats., sec. 1293.

### No. 520.—Affidavit of Publication of Summons, or Other Paper.

[TITLE OF COURT AND CAUSE.]

*John Brown*, of said county, being duly sworn, says, that he is over the age of *eighteen years*, to wit: *twenty-seven years of age*, and is competent to be a witness on the trial of the above entitled action, and is not a party thereto; that he is the *principal clerk* of the *Daily Evening Bulletin*, a daily newspaper printed, published, and circulated in the said city and county; that the *summons*, of which the annexed is a printed copy, was published in said newspaper at least *once a week, and every week, for two months*, commencing on the *fifteenth day of May, 1894*, and ending on the *twenty-second day of July, 1894*.

(Subscribed and sworn to.)

NOTE 1.—In California proof of service of summons may be made, in case of publication, by the affidavit of the printer, or his foreman, or principal clerk, showing the same, and an affidavit of a deposit of a copy of the summons in the post office. C. C. P., sec. 415.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 3055.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 4148.

NOTE 4.—In Montana the same, except as to deposit in post office. C. C. P., sec. 3331.

NOTE 5.—In Utah the same. Comp. Laws, sec. 3213.

NOTE 6.—In North and South Dakotas the same. Comp. Laws, sec. 4903.

NOTE 7.—In Wyoming the same. Rev. Stats., sec. 2438.

NOTE 8.—In Washington the same. Stats. 1893, p. 412.

NOTE 9.—In Oregon the same. Hill's Laws, p. 187, sec. 61.

NOTE 10.—In Colorado the same, but the affidavit must be by the plaintiff's attorney in the action. Stats. 1893, p. 78.

NOTE 11.—In Arizona the same form. Rev. Stats., secs. 712-13.

### No. 521.—Affidavit for Order of Arrest.

[TITLE OF COURT AND CAUSE.]

STATE OF California, }  
City and County of San Francisco. } ss.

*John Doe*, being duly sworn, says, that he is the *plaintiff* in the above entitled action; that a sufficient cause of action exists in favor of *plaintiff* against said *defendant*, as fully appears from the verified complaint herein, a copy of which complaint is hereto annexed and made a part of this affidavit, and, affiant avers that the allegations therein contained are true; that it is an action for the recovery of money on a cause of action arising upon an *express contract*, and that the *defendant* in said action is about to depart from this State with intent to defraud his creditors.

And affiant further states and shows the following facts and circumstances in support of the above allegations of fraud, to wit: Said *defendant* has converted all his property into cash at much less than its real value, and has, under the assumed name of "*Brown John*," secured a passage on the steamer "*Moses Taylor*," advertised to sail this day for Panama, and is now on said steamer with intent to leave this State. Said *defendant*, although he has met this affiant daily within the past week, and was yesterday requested



to pay the plaintiff's claim, has never informed the plaintiff that he intended to leave the State; and yesterday, after having made full preparations to leave this day, he promised the plaintiff to pay to-morrow, at plaintiff's office.

(Subscribed and sworn to.)

NOTE 1.—California C. C. P., secs. 479, 481. See Order of Arrest, Civil Cases.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 3097.

NOTE 3.—In Idaho the same, and when the action is on account of the willful injury to person, character, or property, knowing the property belongs to another. Rev. Stats., sec. 4241.

NOTE 4.—In Montana the same as in Idaho. C. C. P., sec. 801.

NOTE 5.—In Utah the same as in Idaho, and for a breach of promise to marry. Comp. Laws, sec. 3261.

NOTE 6.—In North and South Dakotas the same as in California. Comp. Laws, sec. 4947.

NOTE 7.—In Wyoming the same as in California, and for property lost in gambling. Rev. Stats., sec. 2840.

NOTE 8.—In Washington the same as in Utah. Hill's Codes, sec. 229, p. 135.

NOTE 9.—In Oregon the same substantially as in California—the same general form in both. Hill's Laws, sec. 103, p. 247.

NOTE 10.—In Colorado arrest is not allowed before judgment.

## No. 522.—Affidavit for Order of Arrest—Fraudulent Debtor.

[TITLE OF COURT AND CAUSE.]

STATE OF California, }  
City and County of San Francisco. } ss.

Henry Williams, being duly sworn, says, that he is the plaintiff in the above entitled action; that a sufficient cause of action exists in favor of plaintiff against said defendant, as fully appears from the verified complaint herein, a copy of which complaint is hereto annexed and made a part of this affidavit; that it is an action for the recovery of money, on a cause of action arising upon an express contract, and that the defendant in said action has been guilty of a fraud in contracting the debt and incurring the obligations for which the said action is brought.

And affiant further states and shows the following facts and circumstances in support of the above allegations of fraud, to wit:

On the first day of August, 1894, defendant said to plaintiff, at the Palace Hotel, in said city and county, that he had \$10,000 on deposit with the Bank of Wells, Fargo & Co., San Francisco, and requested plaintiff to lend him one thousand dollars until ten o'clock the next day; and plaintiff, relying upon what defendant had told him as aforesaid, then and there loaned him the said money, which he promised to repay at the said hour of ten A. M. the next day. That defendant never had any money on deposit at said bank, and during all said time he was insolvent, and he has never repaid plaintiff any of said money, and he obtained the same with intent to cheat and defraud plaintiff.

(Subscribed and sworn to.)

NOTE.—See notes to No. 521.

**No. 523.—Affidavit for Order of Arrest—Removal, etc., of Property with Intent to Defraud.**

[TITLE OF COURT AND CAUSE.]

STATE OF California, } ss.  
 City and County of San Francisco. }

*John Sherman*, being duly sworn, says, that he is the *plaintiff* in the above entitled action; that a sufficient cause of action exists in favor of *plaintiff* against said *defendant*, as fully appears from the verified complaint herein, a copy of which complaint is hereto annexed and made a part of this affidavit; that it is an action for the recovery of money, on a cause of action arising upon an *express contract*, and that the *defendant* in said action has removed and is about to dispose of all his property with intent to defraud his creditors.

And affiant further states and shows the following facts and circumstances in support of the above allegations of fraud, to wit:

*Said defendant* has been engaged in the cigar and tobacco business, and during last night had all his tobacco and cigars, the exact value of which is unknown to said affiant, but which said affiant believes to be of the value of fifteen hundred dollars, or thereabouts, being all the property of said defendant not exempt from execution, conveyed from his place of business on Jackson street, in this city, to some place or places, to the said affiant unknown, and has to-day sold a large portion of said tobacco and cigars for cash, and falsely represents that he has only removed his stock, preparatory to putting it into a new place of business, which he is about to open in this city, at No. 210 Pacific street; and said affiant is informed by *A. Sleek*, the owner of the premises last aforesaid, that the same have not been leased to said defendant, and that said defendant has never applied to said *Sleek* for a lease of said premises for any purpose whatever.

(Subscribed and sworn to.)

NOTE.—See notes to No. 521.

**No. 524.—Affidavit for Attachment.**

[TITLE OF COURT AND CAUSE.]

STATE OF California, } ss.  
 County of San Mateo. }

*John Doe*, being duly sworn, says that he is the plaintiff in the above entitled action; that the defendant in the said action is indebted to the said plaintiff in the sum of five hundred (500) dollars, gold coin of the United States, over and above all legal set-offs and counter-claims, upon an express contract for the direct payment of money, to wit: a certain promissory note, given for the sum of five hundred dollars, United States gold coin, with interest thereon at the rate of one per cent. per month, and that such contract was made and is payable in this State, and that the payment



of the same has not been secured by any mortgage or lien upon real or personal property, or any pledge upon personal property. *[If the debt has been secured, then say that the security, describing it, has, without any act of plaintiff, or the person to whom the security was given, becomes valueless.]*

That the said attachment is not sought and the said action is not prosecuted to hinder, delay, or defraud any creditor of the said defendant.

(Subscribed and sworn to.)

NOTE 1.—In California the plaintiff, at any time after issuing the summons, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, in the following cases:

1. In an action upon a contract, express or implied, for the direct payment of money, where the contract is made or is payable in this State, and is not secured by any mortgage or lien upon real or personal property, or any pledge of personal property, or, if originally so secured, such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless.

2. In an action upon a contract, express or implied, against a defendant not residing in this State. C. C. P., secs. 537, 538.

NOTE 2.—In Nevada, when the obligation is made, or, by its terms, payable in the State, attachment will lie. The words, "or pledge of personal property," found in the California statute, are omitted. If there is a pledge of personal or real property, not in the State, then attachment may issue. In other respects, the law is the same as in California. Gen. Stats., sec. 3145.

NOTE 3.—In Idaho attachment may issue upon a "judgment," and so it may in California; a judgment being constructively a contract. In Idaho it may issue on behalf of plaintiff upon any contract for the direct payment of money, without reference to the place where made or payable. In other respects, the same as in California. Rev. Stats., sec. 4302.

NOTE 4.—In Montana the writ may issue upon affidavit made by any person on plaintiff's behalf, the same as in California; and, if the demand is secured, the affidavit must state that the security has become *insufficient* by the defendant's act, or by any other means has become nugatory. C. C. P., sec. 891.

NOTE 5.—In Utah the affidavit must set forth that defendant is indebted to the plaintiff in an amount stated, as near as may be, over all legal set-offs or counter-claims, and whether upon a judgment or a contract, express or implied, and that it has not been secured by a mortgage or pledge of property in Utah. If so secured, and the security has, without plaintiff's act, become valueless, then the writ may issue. Comp. Laws, sec. 3309.

NOTE 6.—In North Dakota attachment will issue when the affidavit states that a cause of action exists, the amount of the claim, and the grounds of it; that the defendant is a foreign corporation or a non-resident, or has departed the State with intent to defraud his creditors, or to avoid service of summons, or concealed himself for like purpose; or that the debt was incurred for property obtained under false pretenses; or that defendant has removed or is about to remove his property from the State to defraud creditors; or has assigned, disposed of, or secreted, or is about to do so, with like intent, whether such defendant be or be not a resident of the State. *Provided*, if a resident debtor is about to remove from the county where he resides, intending to change permanently his residence, a creditor may demand security for his debt; and, unless it is given, attachment may issue, as in other cases. Comp. Laws, secs. 4993-5.

NOTE 7.—In South Dakota the same as in North Dakota, except all after the word "provided" is omitted. Comp. Laws, secs. 4993-95. Laws 1893, p. 40.

NOTE 8.—In Wyoming it may issue when a defendant is a foreign corporation or a non-resident, or is about to become a non-resident; or when he has absconded, with intent to defraud creditors; or has left the county of his residence to avoid service of summons; or conceals himself so summons cannot be served; or is about to remove his property, or part of it, out of the jurisdiction of the Court to defraud creditors; or is about to convert his property, or a part, into money, to place it beyond the reach of creditors; or has property concealed; or has assigned, concealed, or disposed of his property, or a part, to defraud creditors; or has fraudulently or criminally contracted the debt for which suit is about to be brought. But attachment is not allowed on the ground that the defendant is a foreign corporation or a non-resident of the State for any claim other than a debt arising upon contract, judgment, or decree, or for causing death by a negligent or wrongful act. Rev. Stats., secs. 2869, 2870.

NOTE 9.—In Washington attachment may issue when it is shown by affidavit the fact of indebtedness, above all just credits and off-sets, and that it is not sought to avoid defendant's creditors. In other respects, the same as in Wyoming, *except* an attachment may issue to recover damages for injuries arising from the commission of a felony, or for the seduction of some "female." (It is not to issue in case a male is seduced by a female or others.)



Attachment for a debt *not due*, when nothing but time is wanting to fix an *absolute* indebtedness; when defendant is about to dispose of his property with intent to defraud creditors, or that he is about to remove from the State, and refuses to make arrangements to pay the debt when it is due, and which contemplated removal was not known to the plaintiff at the time the debt was contracted; or that he has disposed of his property in whole, or in part, to defraud creditors, or that the debt was incurred for property obtained by false pretenses. Hill's Stats., secs. 289, 290, pp. 160-61.

NOTE 10.—In Oregon the same as in California, except the words "is made, or is payable in this State," are omitted, and instead of the words "or if originally so secured, such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless," the words "or if so secured, when such security has been rendered nugatory by the act of the defendant," are substituted. Hill's Laws, p. 267, sec. 144.

NOTE 11.—In Colorado attachment is allowed at every stage of the case in actions on contract, express or implied. No other conditions for it. C. P., sec. 91.

NOTE 12.—In Arizona the same as in Wyoming, with the addition that "the debt is due for property obtained under false pretenses," and that the attachment is not sued out for the purpose of injuring or harassing the defendant, and that the plaintiff will probably lose his debt unless the attachment is issued. There is no distinction between attachments issued by Judges and Clerks of District Courts and Justices of the Peace. Rev. Stats., secs. 40, 41, 42, p. 58.

### No. 525.—Affidavit for Attachment Against Non-Resident.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
County of *Santa Cruz*. } ss.

*John Doe*, being duly sworn, says, that he is the *plaintiff* in the above entitled action; that the *defendant* in the said action is indebted to the said *plaintiff* in the sum of *four hundred and fifty* dollars, *gold coin* of the United States (upon an express contract for the direct payment of money, to wit: *for goods sold and delivered to defendant*), over and above all legal set-offs or counter-claims, and that the said *defendant* is a non-resident of this State.

That the said attachment is not sought, and the said action is not prosecuted to hinder, delay, or defraud any creditor of the said defendant.

(Subscribed and sworn to.)

NOTE.—See notes to No. 524.

### No. 526.—Affidavit for Examination of Judgment Debtor.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
*City and County of San Francisco*. } ss.

*J. H. P. Gedge*, being duly sworn, says, that he is the *plaintiff* in the above entitled action; that the said *plaintiff*, on or about the *nineteenth* day of *April*, *1894*, recovered a judgment in said action in the Superior Court of the *City and County of San Francisco*, against the *defendant* in said action, for *four thousand and twenty-five* dollars, *United States gold coin*, or thereabouts, and for damages and costs, which judgment was duly entered and docketed in the office of the Clerk of said Court, in the said *City and County of San Francisco*, being the county where the said *defendant* then resided, and in which the judgment roll in said action is filed, *to be executed according to law*.

That the said judgment still remains in full force and effect,

wholly unsatisfied, and not reversed, vacated, or set aside; that on the twenty-third day of April, 1894, an execution upon said judgment was issued to the Sheriff of said city and county, and said execution has been returned unsatisfied.

That as affiant is informed, and verily believes, the said defendant now resides in said city and county, and has property which he unjustly refuses to apply towards the payment or satisfaction of the said judgment.

(Subscribed and sworn to.)

NOTE.—See No. 527 and notes.

**No. 527.—Affidavit—Order on—**(To accompany No. 526).

[TITLE OF COURT AND CAUSE.]

On reading the foregoing affidavit, and it satisfactorily appearing to me therefrom that said *John P. Stork*, the defendant in the above entitled action, has property which he unjustly refuses to apply towards the satisfaction of the judgment in said action; and that it is a proper case for this order, and on application of the plaintiff's attorney, I, the undersigned, Judge of the said Superior Court, do hereby order and require the said defendant, *John P. Stork*, personally to be and appear before *Nott M. Lot*, Court Commissioner of said Court, as referee; hereby appointed for that purpose, at his office, No. 533 Kearny street, in the City and County of San Francisco, on the sixteenth day of November, 1894, at eleven o'clock in the forenoon of that day, to answer concerning his property; and that a copy of said affidavit and of this order be previously served upon said defendant at least five days prior to the said sixteenth day of November.

(Dated.)

NOTE 1.—In California when an execution against property of a judgment debtor is issued to the Sheriff of the county where he resides, or if he do not reside in this State, to the Sheriff of the county where the judgment roll is filed, is returned unsatisfied in whole or in part, the judgment creditor, at any time after such return is made, is entitled to an order from a Judge of the Court, requiring such judgment debtor to appear and answer concerning his property before such Judge, or a referee appointed by him, at a time and place specified in the order; but no judgment debtor must be required to attend before a Judge or referee out of the county in which he resides.

After the issuing of an execution against property, and upon proof, by affidavit of a party or otherwise, to the satisfaction of a Judge of the Court, that any judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment, such Judge may, by an order, require the judgment debtor to appear at a specified time and place, before such Judge, or a referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment, as are provided upon the return of an execution. C. C. P., secs. 714, 715.

NOTE 2.—In Nevada the same. Gen. Stats., secs. 3262-65.

NOTE 3.—In Idaho the same. Rev. Stats., secs. 4504-7.

NOTE 4.—In Montana the same. C. C. P., secs. 1260-72.

NOTE 5.—In Utah the same. Comp. Laws, secs. 3452-54.

NOTE 6.—In North and South Dakotas the same as in California, except the amount due must be at least \$25 in a Justice's Court. Comp. Laws, secs. 5164-65.

NOTE 7.—In Wyoming the same as in California. Rev. Stats., secs. 2820-21.

NOTE 8.—In Washington the same as in California, except the application must be made within five years from entry of judgment, and the judgment must be for \$25 or more. Stats. 1893, p. 435.

NOTE 9.—In Arizona the same as in California. Rev. Stats. secs. 1948-49.

NOTE 10.—In Colorado the same. C. P., secs. 245-46.



### No. 528.—Affidavit for Order for Examination of Debtor of Judgment Debtor.

[TITLE OF COURT AND CAUSE.]

*John Smith*, being duly sworn, says: That he is one of the *plaintiffs* in the above entitled action; that the said *plaintiffs*, on or about the *nineteenth* day of *August, 1894*, recovered a judgment in said action in the Superior Court of the County of *San Joaquin*, State of *California*, against the *defendants* in said action, for *eight hundred* dollars or thereabouts, for damages and costs, which judgment was duly entered and docketed in the office of the Clerk of said Court, in the said County of *San Joaquin*; that an execution against the property of the said *defendants* was duly issued thereupon, and delivered to the Sheriff of said County of *San Joaquin*, being the county where said *defendants* then and still reside, and in which the judgment roll in said action is filed, to be executed according to law; that said execution has been duly returned by said Sheriff, and filed in the office of the Clerk of said Court *wholly* unsatisfied and unpaid; and that the said judgment still remains in full force and effect, *wholly* unsatisfied, and not reversed, vacated, or set aside or appealed from.

That as affiant is informed and verily believes, *John Hoe* has property belonging to said judgment debtors, exceeding in value *two hundred and fifty* dollars, which he unjustly refuses to apply towards the satisfaction of the said judgment, and is indebted to the said judgment debtors in an amount exceeding *fifty* dollars, and resides in said county.

(Subscribed and sworn to.)

NOTE.—This proceeding is made use of in all States. The sections of the several statutes applicable are referred to in the notes to Nos. 526-7, to which they are closely related. If not the sections applicable, then they follow immediately after.

### No. 529.—Affidavit—Commission to Examine Witness Out of State.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*, }  
City and County of *San Francisco*. } ss.

*John Doe*, the *plaintiff* in the above entitled action, being duly sworn, says: That the summons in the said action has been served, and the *defendant* has appeared [or a question of fact has arisen in this proceeding], and that *William Coe* is a witness material and necessary for the said *plaintiff* on the trial of the said action; that said witness resides in the *City of New York*, in the County of *New York*, in the State of *New York*, and is out of this State, and will continue absent when his testimony is required.

(Subscribed and sworn to.)

NOTE.—In California the testimony of a witness out of the State may be taken by deposition, in an action, at any time after the service of the summons or the appearance of the defendant; and, in a special proceeding, at any time after a question of fact has arisen therein. C. C. P., sec. 2020. In practice the affidavit is by the Court re-



quired so that the Judge may feel satisfied that the applicant is proceeding in good faith. The statutes seldom require an affidavit, but, under the rules of Court, provision may be made for it.

In none of the States and Territories of the Pacific Slope it is necessary, except when required by rule of Court. As to depositions taken in the State, see the following form.

### No. 530.—Affidavit for Examination of Witness.

[TITLE OF COURT AND CAUSE.]

A. Brown, being duly sworn, deposes and says:

I. I am the plaintiff in the above entitled action.

II. The summons in said action has been served. P. Quinn is a witness material and necessary for me on the trial of said action, without the benefit of whose testimony I cannot safely proceed to trial; said witness resides in the County of —, and is about to leave said county where said action is pending and is to be tried, and will probably continue absent when his testimony is required [or state other facts showing that the case is within the statute]; or said witness is too infirm to attend the trial; or said testimony will be required upon a motion [stating it]; or said witness is the only one, a fact material to the issue [stating what the fact is].

III. I am informed and believe that it is the intention of said witness to depart from said county on the tenth day of August, 1894. I was not aware of his intended departure in time to give five days' notice of the time and place of taking his deposition; and the attorneys for the said defendant reside at Grass Flat, in said county.

(Sworn to and signed.)

### No. 531.—Order Shortening Time of Notice.

[TITLE OF COURT AND CAUSE.]

Good cause being shown therefor, it is hereby ordered that the time of giving the notice of the trial and place of taking the deposition of P. Quinn is hereby shortened to two days.

(Date.)

A. B., Judge.

NOTE 1.—In California the testimony of a witness in the State may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant, and in a special proceeding after a question of fact has arisen therein, in the following cases:

1. When the witness is a party to the action or proceeding, or an officer or member of a corporation which is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended.

2. When the witness resides out of the county in which his testimony is to be used.

3. When the witness is about to leave the county where the action is to be tried, and will probably continue absent when the testimony is required.

4. When the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend.

5. When the testimony is required upon a motion, or in any other case where the oral examination of the witness is not required.

6. When the witness is the only one who can establish facts or a fact material to the issue; provided, that the deposition of such witness shall not be used if his presence can be procured at the time of the trial of the cause. C. C. P., sec. 2021.

NOTE 2.—In Nevada the same as in California, except the last clause, which is: "When the witness, otherwise liable to attend the trial, is, nevertheless, too infirm to attend, or resides within the county, but more than fifty miles from the place of trial." Gen. Stats., sec. 3429.

NOTE 3.—In Idaho, up to 1893, the law was the same substantially as in California. Then the necessity of the affidavit was dispensed with and notice substituted, making no distinction between depositions taken within or without the State. Stats. 1893, p. 132. See notice to take deposition.

NOTE 4.—In Montana, may be taken the same as in California. C. C. P., secs. 3341-42.

NOTE 5.—In Utah the same as in California, except the last subdivision of the section, which is omitted. Comp. Laws, secs. 3943-49.

NOTE 6.—In North and South Dakotas a deposition may be used only when the witness resides out of the county, when, from age, infirmity, or imprisonment, the witness is unable to attend Court or is dead; when the testimony is required upon a motion, or when the oral examination of the witness is not required. Either party may commence taking testimony at any time after service of summons. Comp. Laws, sec. 5281. Though not expressly required, an affidavit of intention to take deposition appears to be contemplated under section 5281, *Id.*

NOTE 7.—In Wyoming the same as in Dakota, and the same comments. Rev. Stats., sec. 2611, 2613.

NOTE 8.—In Washington, when the witness resides out of the sub-district and more than twenty miles from the place of trial; when he is about to leave the sub-district and go more than twenty miles from the place of trial, and there is a probability that he will continue absent when his testimony is required; when he is sick, infirm, or aged, so as to make it probable that he will not be able to attend at the trial, or when he resides out of the State, his deposition may be taken. Affidavit is not necessary. Hill's Stats., sec. 1666. See notice.

NOTE 9.—In Oregon, when he is a party, it may be taken by *adverse* party; when his residence is such that he is not obliged to attend by subpoena; when he is about to leave the county and go more than twenty miles beyond the place of trial; when he is too infirm to attend, or when the testimony is required upon a motion, or in any other case where oral examination of a witness is not required (by law). Hill's Laws, p. 602, sec. 814. An affidavit is not expressly required, but it is contemplated. *Id.*, p. 601, sec. 805.

NOTE 10.—In Arizona depositions may be taken when the witness is a female, or when, by reason of age, infirmity, sickness, or official duty, it is probable that the witness will be unable to attend the trial; when he resides out of the Territory or county in which the suit is pending, or more than fifty miles from the place of trial; when he has left or is about to leave the Territory or the county in which the suit is pending, and will not probably be present at the trial. An affidavit is not necessary, but notice of intention to take the deposition must be served. Rev. Stats., sec. 1833. See notice.

NOTE 11.—In Colorado, clauses 1, 2, 3, 4, the same as in California. The 5th is: "When the witness is, for any other cause, expected to be unable to attend the trial." C. P., sec. 341. The California clauses 5 and 6 are absent.

## No. 532.—Affidavit and Order Shortening Time for Examination of Witness.

[TITLE OF COURT AND CAUSE.]

STATE OF California, }  
City and County of San Francisco. } ss.

*John Doe*, being duly sworn, says that he is *one of the plaintiffs* in the above entitled action; that the summons in said action has been served; that *William Brown* is a witness material and necessary for the said plaintiff on the trial of said action; that said witness resides in the County of Placer, and is about to leave the said County of Placer and remove to the Territory of Arizona, and he will continue absent from this State when this case comes on for trial; and affiant had no knowledge or information of his intended departure from this State until this day. The said witness intends to start for the said Territory on the fifteenth day of this month; that affiant was not aware of the said intended departure in time to give five days' notice of the time and place of taking his, said witness', deposition; and that the attorney for the said defendant resides at the City and County of San Francisco; [or that the witness resides out of the county; or that he is too infirm to attend the trial; or his testimony is required upon a motion, stating what it is; or that the witness is the only one who can establish material facts, stating what they are].

(Subscribed and sworn to.)



**No. 533.—Affidavit—Order Made on.**

[TITLE OF COURT AND CAUSE.]

Good cause being shown to me, therefore, by the foregoing affidavit, it is ordered that the deposition of the within named *witness* be taken upon *three* days' notice to the *attorney of the defendant*, and that a copy of said affidavit, and of this order, be served on the *said* attorney.

(Dated and signed.)

Take notice that the deposition and testimony of the witness in the foregoing affidavit mentioned will be taken on the *fourteenth* day of *May*, 1894, and before *L. Watson, Esq.*, a Notary Public, at his office, *No. 702 River street*, in the town of *Auburn*, State of *California*; and that the deposition and testimony so taken will be used as evidence on the trial of the above entitled action.

(Dated and signed.)

NOTE.—California C. C. P., sec. 2031. As to other places, see preceding form and the sections of the several statutes immediately following the ones cited.

**No. 534.—Affidavit on Claim and Delivery of Personal Property.**

[TITLE OF COURT AND CAUSE.]

STATE OF *California*, }  
County of *Yolo*. } ss.

*John Doe*, being duly sworn, says, that he is the *plaintiff* in the above entitled action; that the said *plaintiff* is the *owner* of [or is lawfully entitled to the possession of; or, *plaintiff* being the owner, the property is wrongfully detained by defendant] the following described personal property, to wit:

[Description of the property.]

That the said property is in the possession of, and wrongfully detained by, the *defendant* in the said action; that the alleged cause of the detention of the said property, according to this affiant's best knowledge, information, and belief is the following, to wit:

[State cause of detention.]

That the said property, or any part thereof, has not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under an execution or an attachment against the property of the said *plaintiff*, and that the actual value of the said property is *four hundred and fifty* dollars.

(Subscribed and sworn to.)

NOTE 1.—In California where a delivery is claimed, an affidavit must be made by the plaintiff, or by some one in his behalf, showing:

1. That the plaintiff is the owner of the property claimed (particularly describing it), or is entitled to the possession thereof;
2. That the property is wrongfully detained by the defendant;
3. The alleged cause of the detention thereof, according to his best knowledge, information, and belief;



4. That it has not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under an execution or an attachment against the property of the plaintiff, or if so seized, that it is by statute exempt from such seizure;

5. The actual value of the property. C. C. P., sec. 510.

NOTE 2.—In Nevada the same. Gen. Stats., secs. 3122, 3133.

NOTE 3.—In Idaho the same. Rev. Stats., secs. 4271-72.

NOTE 4.—In Montana the same. C. C. P., sec. 841.

NOTE 5.—In Utah the same. Comp. Laws, secs. 3288-89.

NOTE 6.—In North and South Dakotas the same, except the affidavit must state that plaintiff is lawfully entitled to the possession of the property (particularly describing it), by virtue of a special property therein, the facts in respect to which shall be set forth. Comp. Laws, secs. 4972-73.

NOTE 7.—In Wyoming the affidavit must give a description of the property and state that he is the owner, or has a special interest in it, and if the interest is special the facts must be stated. That the property is wrongfully detained by defendant. That it was not taken on any process issued against the plaintiff. If so taken, then it must state that it was exempt from execution expressly (by statute), or upon a demand (under a statute), or selection by plaintiff, and is not held for a tax; or, if held for a tax, the tax was not legally levied or assessed against plaintiff. Rev. Stats., sec. 3021, as amended 1890-91, Stats., p. 385.

NOTE 8.—In Washington the same as in California, with clause 3 omitted. Hill's Stats., sec. 256 (not indexed in Stats.).

NOTE 9.—In Oregon the same as in California. Hill's Laws, sec. 133, p. 261.

NOTE 10.—In Arizona the affidavit must show that plaintiff is the owner, describing it, or entitled to the possession. That defendant wrongfully detains it. The actual value. That it has not been seized upon any process, execution, or attachment against plaintiff's property. Rev. Stats., sec. 192.

NOTE 11.—In Colorado the same as in California. C. C., sec. 80.

### No. 535.—Affidavit of Service of Summons.

[TITLE OF COURT AND CAUSE.]

STATE OF California, }  
City and County of San Francisco. } ss.

*John Stubbs*, being duly sworn, deposes and says, that he is, and was on the day when he served the annexed summons, a male citizen of the United States, over the age of eighteen years, and is not a party to the above entitled action; that he received the annexed summons in said action on the *nineteenth* day of *August*, 1894, and personally served the same upon *Robert Roe*, the above named defendant, on the said *nineteenth* day of *August*, 1894, by delivering to *Robert Roe*, the said defendant, personally, in the *City and County of San Francisco*, a copy of said summons, attached to a true copy of the complaint in said action therein named; and deponent further says that he knows the person so served to be the person named as defendant in said action.

(Subscribed and sworn to.)

NOTE 1.—In California the summons may be served by the Sheriff of the county where the defendant is found, or by any other person, over the age of eighteen, not a party to the action. A copy of the complaint must be served with the summons. When the summons is served by the Sheriff, it must be returned, with his certificate of its service, and of the service of any copy of the complaint, where such copy is served, to the office of the Clerk from which it issued. When it is served by any other person, it must be returned to the same place, with an affidavit of such person of its service, and of the service of a copy of the complaint, where such copy is served. C. C. P., sec. 41.

NOTE 2.—In Nevada the same, except the person serving must be over twenty-one years of age and the copy served must be certified by the Clerk or the plaintiff's attorney. Gen. Stats., sec. 8050.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 4143.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 635.

NOTE 5.—In Utah the statute makes no reference to the age of the person serving. It seems to follow that the person making affidavit of service must be over twenty-one years of age. Comp. Laws, sec. 3207.

NOTE 6.—In North and South Dakotas the summons may be served by any person not a party to the action, the same as in Utah. The affidavit need not state that a copy of the complaint was served with the summons. Comp. Laws, sec. 4899.

NOTE 7.—In Wyoming the summons is directed to the Sheriff of the county, and must be served by him, or by a person appointed by him to serve it. Rev. Stats., sec. 2428.

NOTE 8.—In Washington the service may be by a person over twenty-one years of age, other than the plaintiff, who is a competent witness in the action. The affidavit of service must be attached to the summons or indorsed on it. The affidavit must also state the time, place, and manner of service. Stats. 1893, p. 407, secs. 6, 14.

NOTE 9.—In Oregon the summons must be served by the Sheriff of the county or by a person specially appointed by him. Proof of service may be made by affidavit. Hill's Laws, p. 175, sec. 54; p. 187, sec. 61.

NOTE 10.—In Arizona the affidavit may be by any disinterested person, competent to make oath of the fact of service. The affidavit must be indorsed on the summons, and the time, place, and manner of service stated in the affidavit. Rev. Stats., secs. 698-707.

NOTE 11.—In Colorado the same as in California, as to the affidavit of service. C. P., sec. 37.

### No. 536.—Affidavit for Publication of Summons.

[TITLE OF COURT AND CAUSE.]

STATE OF CALIFORNIA, }  
City and County of San Francisco, } ss.

John Doe, being duly sworn, says: That he is the plaintiff in the above entitled action; that the complaint in said action was filed with the Clerk of said Court on the *second* day of *December*, 1894, and summons thereupon issued; that said action is brought to recover the sum of five thousand dollars, due and unpaid from said defendant, Richard Roe, to this plaintiff upon a promissory note made by said defendant, and dated at the City of San Francisco, on the first day of January, 1894, payable in thirty days after date to the plaintiff, with interest at the rate of two per cent. per month until paid. [The cause of action in this affidavit should be stated as fully as in a pleading, if reference is not made to the complaint on file.] The cause of action is fully set forth in his verified complaint, on file herein.

That said defendant resides out of this State, and cannot, after due diligence, be found therein [or that he has departed from this State; or cannot, after due diligence, be found within this State; or conceals himself, to avoid service of summons; or is a foreign corporation, having no managing or business agent, cashier, or secretary within the State. That defendant is a necessary party.] And this affiant, in support thereof, states the following facts and circumstances:

That affiant, for the purpose of finding said defendant and ascertaining his place of residence, has made due and diligent inquiry of and among the relations, former neighbors, friends, business agents, and correspondents of the defendant [as the fact may be, stating the names of the parties inquired of], and is informed by A. B., the agent [or brother or neighbor] of the defendant, residing in the City and County of San Francisco, that the defendant is not and does not reside in this State; but that he is and resides out of the State, and that his present place of residence is at the City of Dubuque, in the State of Iowa.



That affiant has made diligent inquiry to find said defendant, but cannot, after due diligence, find him within this State.

That this affiant therefore says that personal service of said summons cannot be made on said defendant, *Richard Roe*, and prays for an order that service of the same may be made by publication thereof.

(Subscribed and sworn to.)

NOTE 1.—In California, in this class of proceedings, it must appear to the satisfaction of the officer making the order, that a cause of action exists, and that defendant comes within one of the clauses of the statute permitting publication of summons. Sometimes a Judge demands a return by the Sheriff that *he* (the Sheriff) cannot find the defendant, etc. It may happen, too, that in cases where all the facts showing a cause of action are not stated in the affidavit, that after publication the Court may sustain a demurrer to the complaint, referred to in the affidavit, on the ground that it does not state facts sufficient to constitute a cause of action. It has been done, and, logically, the order of publication would seem to be void. In all places, at some stage of the proceedings, when the residence is known, an order is made to mail a copy of the summons and complaint to the person to be served, or else the copy must be mailed without an order. Cal. C. C. P., sec. 412. See Orders.

NOTE 2.—In Nevada the same as in California, except *any* corporation or joint stock association that cannot be served in the usual manner may be served by publication. Also, the affidavit itself must show a cause of action, and that defendant is a necessary party. Gen. Stats., sec. 3552.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 4145.

NOTE 4.—In Montana the same as in California, except it is sufficient if the affidavit states that a cause of action exists. The Clerk makes the order of publication. C. C. P., sec. 637.

NOTE 5.—In Utah the same as in California. The clause relating to corporations is the same as in Nevada. Comp. Laws, sec. 3210.

NOTE 6.—In North and South Dakotas, when, after due diligence, the person to be served cannot be found within the State; when the affidavit shows a cause of action against him, or that he is a proper party to an action relating to realty; when defendant is a foreign corporation, having property in the State, or the cause of action arose therein; when defendant has departed the State to defraud creditors, or to avoid summons, or is concealed for that purpose; when he is a non-resident, and has property in the State, and the Court has jurisdiction of the action; when the subject of the action is real or personal property in the State, and the defendant has or claims a lien or interest on or in it, or the relief demanded in the complaint consists in excluding defendant from a lien on the property. Comp. Laws, sec. 4900. The section of the statute above quoted is the worst *jumble* on the Pacific Coast, and appears to have been built to meet special cases as they arose in the practice of some legislator.

NOTE 8.—In Wyoming the summons may be published when the defendant resides out of the State, or his residence cannot be ascertained; in actions where it is sought to take by provisional remedy any of defendant's property; when it is a foreign corporation, or a non-resident, or if his place of residence is unknown; or in actions against domestic corporations failing to elect officers or to appoint agents upon whom summons can be served, having no place of business in the State; in actions against and relating to real estate, the same as in Dakota; in actions against executors, administrators, or guardians, when the defendant has given a bond in the State and his place of residence is unknown, or when he is a non-resident; in actions where the defendant resident has departed from his county, or concealed himself to defraud creditors or to avoid summons; when, in a petition in error, the defendant has no attorney of record in the State, and is a non-resident, and absent from the State, or has left the State, or conceals himself, to avoid service; in actions to impeach a judgment for fraud, or to obtain satisfaction of the same; and, in actions of divorce, the summons may be published. Rev. Stats., sec. 2435.

NOTE 9.—In Washington the same as in Wyoming, and when the action is to foreclose a mortgage, or redeem or satisfy one, or to enforce a lien on land, and when the action is against a corporation of any description, and its officers cannot be found. The affidavit must show a cause of action, and that a copy of the summons has been deposited in the post office, and directed to the defendant at his place of residence, unless the affidavit states that his residence is unknown. Stats. 1893, p. 410, sec. 9.

NOTE 10.—In Oregon, when defendant is a foreign corporation, and has property within the State, or the cause of action arose there; when he has departed from the State (being a resident) to defraud creditors, or to avoid service, or conceals himself to avoid service, or has departed the State and remained absent six consecutive weeks, and when he is a non-resident of the State, and has property in it, and the Court has jurisdiction of the subject of the action, the summons may be published upon affidavit showing a cause of action, the defendant being a proper party to an action relating to real estate in the State. Hill's Laws, p. 181, sec. 56.

NOTE 11.—In Arizona, when the defendant is a non-resident of the Territory, or is absent from it, or is a transient person, or that his residence is unknown to affiant, or is a foreign corporation doing business or having property in the Territory, but having no



agent there, or when defendant conceals himself to avoid service, the summons may be published. The affidavit shall state the facts to bring the application within one or more of the classes aforesaid. If the residence is known, the plaintiff shall cause a copy of the summons and complaint to be put in the post office, postage paid, directed to the defendant at his place of residence.

NOTE 12.—In Colorado, after return of the summons, the affidavit is substantially as in California. C. P., sec. 41.

### No. 537.—Affidavit of Service of Summons by Mail.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
City and County of *San Francisco*. } ss.

*William Roe*, of said city and county, being duly sworn, says, that he is a male citizen of the United States, over *eighteen (18)* years of age, and not a party to the above entitled action.

That on the *fifteenth* day of *August, 1894*, the complaint in said action was filed, and afterwards, to wit: on the *sixteenth* day of *August, 1894*, an order was made by the Court for the publication of the summons in said action, and also a further order that a copy of said complaint and a copy of said summons should be forthwith deposited in the United States Post Office, at the City and County of *San Francisco*, directed to the defendant, *Richard Roe*, in said action, at his place of residence, to wit: at the City and County of *New York*, State of *New York*; that forthwith, to wit: on the *fifteenth* day of *August, 1894*, and in pursuance of the said order of the Court, he deposited in the United States Post Office, at the City of *San Francisco*, a copy of said summons, attached to a copy of the said complaint, directed to *Richard Roe*, the said defendant, at the City and County of *New York*, State of *New York*, the place of his residence, as aforesaid, and paid the postage thereon in advance, and that there is a regular communication by the United States mails from said Post Office of deposit thereof, as aforesaid, to said defendant's said place of residence.

(Subscribed and sworn to.)

NOTE.—In California, section 413 of the Code requires the Judge to order a copy of the summons and complaint deposited in the post office. Section 415 only requires affidavit of the deposit of a copy of the summons, but the affidavit should always be as in the form. All the other States and Territories, except Utah, have made the same mistake. The provisions of the several statutes providing for such affidavits will be found either in the sections referred to in the preceding form, or immediately following. The order and affidavit for it, and the affidavit and order of publication, are part of one subject.

### No. 538.—Affidavit of Service.

[TITLE OF COURT AND CAUSE.]

*A. B. C.*, being duly sworn, says, that he is the attorney of record for the defendant herein; that at twelve o'clock m., on the *third* day of *August, 1894*, he served the plaintiff herein with defendant's notice of motion to take the deposition of *A. C. B.* in this action, by leaving a copy of said notice at the residence of said plaintiff, *No. 327 Polk street*, in the City and County of *San Francisco*. At that time the said plaintiff was absent from his said residence, and the said notice was handed to *S. P. C.*, the wife of

said plaintiff, his wife being a discreet person over twenty-one years of age [or any other person of suitable age (legal age) and discretion].

(Subscribed and sworn to.)

### No. 539.—Affidavit of Service by Mail.

[TITLE OF COURT AND CAUSE.]

*J. M.*, being duly sworn, says, that he is the attorney of record for the plaintiff herein; that he resides in the *City and County of San Francisco*, State of *California*; that *E. F. P.* is the attorney of record for the defendant herein, and that the said *E. F. P.* resides in *Redwood City*, County of *San Mateo*; that in each of said places there is a United States Post Office, and between said two places there is a regular daily communication by mail; that on the *nineteenth* day of *August*, 1894, deponent served a true copy of the amended complaint herein on said *E. F. P.*, the said attorney of defendant, by depositing said copy of complaint, on said date, in the Post Office at said *City and County of San Francisco*, aforesaid, properly inclosed in a sealed envelope addressed to said *E. F. P.*, attorney at law, *Redwood City, San Mateo County, State of California*, and prepaying the postage thereon.

(Subscribed and sworn to.)

### No. 540.—Affidavit of Service—Office Table.

[TITLE OF COURT AND CAUSE.]

*A. B. C.*, being duly sworn, says that he is the attorney of record for the defendant herein; that at *twelve* o'clock M., on the *third* day of *August*, 1894, he served on the plaintiff herein defendant's notice of motion to take the deposition of *A. C. B.* in this action, by leaving a copy of said notice on the only table in the law office of *A. W. A.*, the said plaintiff's attorney herein, at *No. 273 Sansome* street, in the *City and County of San Francisco*, said table being in a conspicuous place in said office, to wit: the table used by the said *A. W. A.* when engaged in attending to his business as attorney at law. When said notice was so left on said table said office was open, but no person was in it, and a notice was on the office door giving notice that said attorney had gone to lunch, and would return in three hours.

(Subscribed and sworn to.)

### No. 541.—Affidavit—Service of Notice—Clerk, etc.

[TITLE OF COURT AND CAUSE.]

[The same as in the preceding down to the words "a copy of said notice," then say:] with *A. G. T.*, the clerk of *A. W. A.*, the attorney of plaintiff, [or say: with *L. B.*, who had at that time charge of said office; and then add:] the said *A. W. A.* being at that time absent from said office.

(Subscribed and sworn to.)



**No. 542.—Affidavit to Procure Order of Examination.**

[TITLE OF COURT AND CAUSE.]

*J. C. S.*, the plaintiff in the above entitled action, being duly sworn, says, that an *attachment has been issued in this action, which has not been returned*; that he has been informed, and he believes, and therefore avers, that one *H. S.* has in his possession and under his control the following described property belonging to defendant [description]; wherefore, he prays for an order directing the said *H. S.* to appear before this Court and be examined under oath respecting the same.

(Subscribed and sworn to.)

NOTE.—Cal. C. C. P., sec. 545.

**No. 543.—Affidavit—Refusal to Obey Court's Order.**

[TITLE OF COURT AND CAUSE.]

*J. B.*, being duly sworn, says, that he is, and was during all the times hereinafter mentioned, the Sheriff of said County of *Sierra*, duly elected and qualified; that on the *third day of May, A. D. 1895, J. S., Superior Judge in and for said county, duly made an order in said case that H. S. appear before him on the twenty-seventh day of April, 1895, and then and there submit himself to examination in said action in proceedings supplemental to execution*; which order, and the affidavit on which said order was based, are herein referred to and made part hereof, and marked Exhibits "*A*" and "*B*"; that in obedience to said order the said *H. S.* appeared in Court as in said order directed, and on examination concerning his property, testified that he had on his person and under his control, *a gold watch, a gold ring, and fifty cents in money, all of which was his property*. Thereupon the said Court made an order that he deliver all said property to affiant, as Sheriff, to be applied toward the satisfaction of the execution in said action; that petitioner was informed of said order, but refused to obey it, and he still does refuse to deliver any of said property to affiant to be applied on said execution as aforesaid, although said property is in his possession. Wherefore affiant prays that the said *H. S.* may be arrested and punished as for a contempt of this Court.

(Subscribed and sworn to.)

NOTE 1.—In California the following acts, in respect to a Court of Justice, are contempts:

1. Disorderly, contemptuous, or insolent behavior toward the Judge while holding the Court, tending to interrupt the due course of a trial or other judicial proceeding;
2. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding;
3. Misbehavior in office, or other willful neglect or violation of duty by an Attorney, Counsel, Clerk, Sheriff, Coroner, or other person appointed or elected to perform a judicial or ministerial service;
4. Deceit or abuse of the process or proceedings of the Court by a party to an action or special proceeding;
5. Disobedience of any lawful judgment, order, or process of the Court.
6. Assuming to be an officer, attorney, counsel of a Court, and acting as such without authority;



7. Rescuing any person or property, in the custody of an officer by virtue of an order or process of such Court;
8. Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from, the Court where the action is on the calendar for trial;
9. Any other unlawful interference with the process or proceedings of a Court;
10. Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness;
11. When summoned as a juror in a Court, neglecting to attend or serve as such, or improperly conversing with a party to an action to be tried at such Court, or with any other person, in relation to the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the Court;
12. Disobedience, by an inferior tribunal, Magistrate, or officer of the lawful judgment, order, or process of a Superior Court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, Magistrate, or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer.

It is also a contempt for a person ejected from real property to re-enter under the same [old] title. C. C. P., sec. 1209.

NOTE 2.—In Nevada the first clause is like California, and also adds the Judge's chambers when he is performing judicial duties, and arbitrators and referees. The second is the same. Nos. 3 and 4 are absent. Nos. 5 and 8 the same. The remainder are absent; but it is expressly made a contempt to disobey the Court's order and speak to a juror about a pending case. Gen. Stats., sec. 3482.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 5155.

NOTE 4.—In Montana the same as in California. C. C. P., secs. 2170-83.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 3821.

NOTE 6.—In North and South Dakotas there is no general statute, but there are many specified contempts in different statutes. In all cases the form in the text will be found applicable. The same may be said of several special contempts found in the statutes of all the States. Comp. Laws., secs. 5112-85.

NOTE 7.—In Wyoming the same as in Dakota. Rev. Stats., sec. 2600.

NOTE 8.—In Washington the same as in California. Hill's Stats., sec. 773.

NOTE 9.—In Oregon the same as in California. Hill's Laws, sec. 650, p. 527.

NOTE 10.—In Arizona the same as in Dakota. Rev. Stats., sec. 1828.

NOTE 11.—In Colorado the same as in California—clauses 1, 2, 5, 7, and 10. C. P., sec. 321.

## No. 544.—Affidavit—Contempt Committed.

[TITLE OF COURT AND CAUSE.]

*J. B.*, being duly sworn, says: That he is a duly elected, qualified and acting Sheriff of said county; that on the second day of *January, 1895*, in the Town of *Downieville*, *Sierra County*, he duly served a subpoena on *H. C., Esq.*, duly issued out of this Court, on the part of defendant, commanding the said *H. C., Esq.*, to appear in this Court on this *third day of January, 1895*, at the hour of *ten o'clock A. M.*, as a witness on behalf of defendant; that the said *H. C.* did not demand his fees as a witness; that when the said *H. C.* was served as aforesaid he said that he would not appear, and that if the Court wanted him it might send a carriage, and he would then consider whether he would obey said subpoena; that the said *H. C.* has not obeyed said subpoena, and did not appear as a witness this day, though his name was by me, as directed by the Judge of this Court, called in a loud voice at the door of this Court.

Wherefore, affiant prays that a warrant may be issued for the arrest of said *H. C.*, and that he may be dealt with as provided by law.

(Subscribed and sworn to in the usual form.)

NOTE.—See notes to No. 543.

**No. 545.—Affidavit—Substitution of Party.**

[TITLE OF COURT AND CAUSE.]

*J. M.*, being duly sworn, says: That he is defendant in the above entitled action [*and has been served with summons therein, but has not answered*]; that said action is prosecuted against defendant to recover from him a *gray stallion known as "H. L. B."*; that one *H. N.*, not a party to said action, claims to *own said stallion* and to be entitled to his possession, and he makes said claim without any collusion, but in good faith; and he has, since said action was commenced, *demand said stallion of defendant*; that affiant has no interest in said stallion or in the result of said action.

Wherefore, affiant prays for an order substituting said *H. N.* as defendant herein in place of affiant, and to discharge affiant from liability to either party in the action.

(Subscribed and sworn to.)

NOTE.—Cal. C. C. P., secs. 385-86; and substantially the same everywhere under rules of practice without statutory provision.

**No. 546.—Affidavit—Sole Trader.**

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
City and County of *San Francisco*. } ss.

I, *Amelia Jones*, do, in the presence of Almighty God, solemnly swear, that this application was made in good faith, for the purpose of enabling me to support myself and my *five children, viz: Alfred Jones, Walter Jones, Frederick Jones, Amelia Jones, and Ernest Jones*, and not with any view to defraud, delay, or hinder any creditor or creditors of my husband, and that of the moneys so to be used by me in business not more than *five hundred dollars* has come, either directly or indirectly, from my husband. So help me God.

(Subscribed and sworn to.)

NOTE 1.—A certified copy of the decree, with the above oath indorsed thereon, must be recorded with the County Recorder before the applicant becomes a sole trader. Cal. C. C. P., sec. 1818.

NOTE 2.—Nevada. Gen. Stats., sec. 534.

NOTE 3.—Idaho. Rev. Stats., sec. 5850.

NOTE 4.—Montana. The same as in California, except "Almighty God" is omitted. C. C. P., sec. 2295. All States and Territories have generally given married women the same rights that men have to do business in their own names, and as to their separate property; and so has California. The California statute above referred to is a *survival* only, and remains unrepealed, because forgotten.

**No. 547.—Answer—General Denial.**

[TITLE OF COURT AND CAUSE.]

The defendant answers [*or, if only a part of the defendants join, the defendants A. B. and C. D. answer*] the complaint of the plaintiff herein, and denies generally and specifically each and every allegation in the said complaint contained.

**NOTE.**—It is a general rule that an answer to a verified complaint must also be verified, except where some statute provides that it need not be.

The following form of verification (without special examination of the statutes) is thought to be sufficient. It will be found in another place, under the head "Verification":

*State of California,*  
*County of Santa Clara.* } ss.

*Horace Jones, being duly sworn, says that he is one of the defendants in the above entitled action; that he has heard read the foregoing answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and that as to those matters he believes it to be true.*

(Subscribed and sworn to.)

### **No. 548.—Answer—General Denial—Part of Pleading.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That he denies each and every allegation contained in the paragraphs numbered 4 and 5, on folios 1 and 2 of plaintiff's complaint.

### **No. 549.—Answer—Denial by Articles.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and denies each and every allegation contained in the [*third and fifth*] articles thereof.

### **No. 550.—Answer—Denial of Agreement.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the plaintiff's complaint:

That he denies that he contracted or agreed with the said plaintiff in manner or form as alleged in the complaint, or in any manner or form, or at all.

### **No. 551.—Answer—Denial of Promise.**

[TITLE OF COURT AND CAUSE.]

The defendant answers the complaint, and denies:

That he ever promised [*or warranted or covenanted*], as alleged in the complaint, [*or that he ever made the agreement mentioned in the complaint, or any agreement, at any time or place*].

### **No. 552.—Answer—Denial of Promise.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the plaintiff's complaint:

1. That he did not make with said plaintiff the said agreement by the said plaintiff set forth and alleged in his said complaint, and denies each and every allegation in said complaint in regard thereto.

### **No. 553.—Answer—Denial of Conditions Precedent.**

[TITLE OF COURT AND CAUSE.]

The defendant answers the complaint, and denies:

That the plaintiff did perform the conditions precedent to said



[contract] on his part to be performed, or any one of them, or at all, or that he made any deposit, or tender, or [*state what, as in contract required*].

**No. 554.—Answer—Denial of Conditional Delivery.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and denies:

That the said promissory note [*or deed*] was executed or delivered by the plaintiff on the condition and understanding alleged, but avers that it was delivered by him absolutely and without condition.

**No. 555.—Answer—Denial of Demand.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and denies:

That the plaintiff demanded the proceeds of the goods therein mentioned before the commencement of this action.

**No. 556.—Answer—Denial of Falsity.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and denies:

That the representations alleged to have been made by the defendant to the plaintiff were false; but, on the contrary thereof, avers that said representations and each of them were and are true.

**No. 557.—Answer—Denial of Fraud.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and denies:

That he made the said representations in manner and form as the same are in the said complaint alleged, or otherwise, or at all.

**No. 558.—Answer—The Same—Another Form.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the plaintiff's complaint, and denies:

That he [obtained the said deed from the plaintiff] by fraud and misrepresentation, in manner and form as the said plaintiff hath in his said complaint alleged, or by any fraud or misrepresentation whatever.

**No. 559.—Answer—Denial of Part Performance.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and denies:

1. That he put plaintiff into or consented to plaintiff's taking possession of the said premises, under and in part execution of the said pretended sale and contract of the said premises, as charged in said complaint, or at all.

2. The defendant avers that the said plaintiff, of his own wrong, and without the license and against the consent of said defendant, entered into said premises, and occupied and improved the same.

**No. 560.—Answer—Denial of Partnership.**

[TITLE OF COURT AND CAUSE.]

The defendant, answering the complaint, denies:

That the said [*naming them*] were partners, as alleged [*or that the said A. B. was a partner with the said [naming them], as alleged*].

**No. 561.—Answer—Denial of Representations.**

[TITLE OF COURT AND CAUSE.]

The defendant, answering the complaint, denies:

That he made the representations alleged, or any or either of them.

**No. 562.—Answer—Denial of Sale.**

[TITLE OF COURT AND CAUSE.]

The defendant, answering the complaint, denies that he sold the goods to the plaintiff.

**No. 563.—Answer—Denial of a Trust.**

[TITLE OF COURT AND CAUSE.]

The said defendant answers to the complaint of plaintiff:

And denies that he received the said goods, in said complaint mentioned, for the purposes and on the trusts aforesaid, or any of them, or in trust at all, in manner alleged in said complaint, or in any manner.

**No. 564.—Answer—Same—Another Form.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint of plaintiff:

1. That the said plaintiff did not deliver, and the said defendant did not receive, the said [*describe what*] in the said complaint mentioned, upon the trust and confidence therein alleged.

2. The said defendant avers that he received the same as and for his own property, absolutely, and without any trust thereto attached.

**No. 565.—Answer—Denial on Information and Belief.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That, according to his information and belief, he denies generally and specifically each and every allegation in the plaintiff's complaint contained.

**No. 566.—Answer—Denial of Knowledge to Form Belief.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That he has no knowledge, information, or belief sufficient to enable him to answer any or either of the allegations in said complaint contained, and therefore he denies each and every of said allegations. [*Or if confined to one allegation, after the word "answer" proceed*] the allegation that [*set out the allegation, or refer to it so as to clearly identify it*]; and therefore denies the same.

**No. 567.—Answer—Denial of Knowledge.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the plaintiff's complaint:

1. That he denies that he has ever been within the *State of California*, or that he ever personally transacted any business therein.

2. Denies that he did at the time stated, or at any other time, do or say [*state what*].

**No. 568.—Answer—Accord and Satisfaction.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That on the *eighth* day of *April*, 1894, at *P.*, he delivered to the plaintiff the promissory note of *B. C.* for \$100.

2. That the plaintiff accepted the same in full satisfaction and discharge of the claim [*or demand*] set up in the complaint.

**No. 569.—Answer—Alteration of Contract.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That on the *tenth* day of *April*, 1894, at *P.*, the plaintiff agreed with *C. D.* in the complaint mentioned, in consideration of \$50, to extend the time of payment of the rent guaranteed by the defendant *thirty* days.

2. That the defendant had no knowledge of the said extension, and did not then, nor has he since, assented thereto.

**No. 570.—Answer—Another Action Pending.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

That there was at the commencement of this action, and still is, another action pending in the Justice's Court of the [*describe the Court*], between the same parties, and for the same cause of action as that in the complaint herein stated and alleged.



**No. 571.—Answer—Arbitration and Award.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

1. That on the *eleventh* day of *April*, 1894, the plaintiff and defendant [*in writing*] mutually submitted the demand set forth in the complaint to the arbitration of *A. B.* and *C. D.*, and which said submission has never been revoked.

2. That on the *twenty-first* day of *April*, 1894, at *P.*, the said *A. B.* and *C. D.* made and published their award [*by which they declared the plaintiff not entitled to any part of his said demand*].

3. *A copy of said submission and of said award is hereto attached, marked "Exhibit A," and made part hereof.*

**No. 572.—Answer—Bankruptcy.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That on the *twelfth* day of *April*, 1894, at *P.*, the *United States District Court*, of the *Ninth District of California*, made and granted to the defendant a decree of discharge from his debts as a bankrupt, of which decree of discharge a copy is annexed [*annex copy of decree*] and made a part hereof.

**No. 573.—Answer—Same—By Composition Deed.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That he admits that on the *twelfth* day of *April*, 1894, he was indebted to the plaintiffs, as alleged in the complaint.

2. That afterwards, on the *nineteenth* day of *April*, 1894, at *P.*, the plaintiffs, by their deed under seal, agreed with the defendant that they would accept \$150, then and there paid them by the defendant, and by the plaintiffs then and there accepted and received, in full satisfaction of said indebtedness; and divers other creditors of the defendant then and there also, by the same deed, agreed to accept, and did accept, the sum currently with the said plaintiffs, in full satisfaction of the several debts of defendant to such creditors respectively, and covenanted with the defendant not to sue the defendant for such respective debts; a copy of which deed is hereto annexed as a part hereof. [*Insert copy.*]

**No. 574.—Answer—Compromise of Claim.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. [*State demand set up by plaintiff.*]

2. That afterwards, on the *fourteenth* day of *April*, 1894, at *P.*, the defendant agreed to pay and the plaintiff agreed in writing to accept \$200, in full satisfaction of said claim, as a compromise thereof.

3. That on the *eighteenth* day of *April*, 1894, at *P.*, the defendant paid and the plaintiff so accepted said sum.

**No. 575.—Answer—Credit Unexpired.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That the goods mentioned therein were sold to him upon a credit of three months from the *twenty-first* day of *February*, 1894.
2. That such period had not elapsed before the commencement of this action.

**No. 576.—Answer—Death of Defendant Before Suit.**

[TITLE OF COURT AND CAUSE.]

The defendant *C. D.* answers to the complaint:

That *A. B.*, one of the defendants in this action, died at *P.*, before this action, and on or about the *seventeenth* day of *April*, 1894.

**No. 577.—Answer—Duress.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That the [bond] mentioned therein was extorted from him by threats of personal violence, and was executed by him under fear of the same [*or from fear while in prison, etc.; state force, etc.*].
2. That the said [bond] was executed by him without any consideration therefor.

**No. 578.—Answer—Former Judgment.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That on the *eighteenth* day of *April*, 1894, at *P.*, in an action then pending in the Justice's Court, between *A. B.*, plaintiff, and *C. D.*, defendant, and for the same cause of action as that set forth in the complaint herein, judgment was duly given and made. [*Describe the judgment.*]

**No. 579.—Answer—Fraud.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That the plaintiff induced him to make the note mentioned in the complaint by representing that he was authorized by one *A. B.*, to whom the defendant owed the amount of the same, to take a note to himself in satisfaction of such debt [*or otherwise. State the fraudulent misrepresentations, etc.*].
2. That the said representations were false.
3. That the defendant received no consideration for the said note.

**No. 580.—Answer—Infancy of Plaintiff.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That the plaintiff is not of the age of *twenty-one years* [if a female, *eighteen years*]; or that at the commencement of this action the plaintiff was not of the age of [twenty-one] years, and has no guardian appointed herein.

**No. 581.—Answer—Infancy of Defendant.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That at the time of making the supposed agreement [or of the delivery of the goods] mentioned therein, he was under the age of [twenty-one] years, to wit: of the age of *eighteen years*, and said agreement did not relate to personal property in the immediate possession and control of this defendant, nor for things necessary for his support.

**No. 582.—Answer—Marriage of Plaintiff.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That the plaintiff was, at the commencement of this action, and still is, the wife of one *A. B.*, who is still living at *P.*, with this plaintiff.

2. That this action does not concern her separate property, or her right or claim to a homestead.

**No. 583.—Answer—Marriage of Defendant.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That at the time of making the agreement [or of the delivery of the goods mentioned therein] she was the wife of *J. K.*

**No. 584.—Answer—Marriage of Defendant.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That she was, at the commencement of this action, and still is, the wife of *A. B.*, who now resides at *P.*, with this defendant.

2. That this action does not concern her separate property, or her right or claim to the homestead property.



**No. 585.—Answer—Misjoinder.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That *A. B.* is improperly joined as a plaintiff [or defendant] in this: That he has no interest in the subject matter in controversy [or, if otherwise, state reasons].

**No. 586.—Answer—Misnomer.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That the true name of the plaintiff [or of defendant] is and ever has been *John Doe*, and not *A. B.*, in which name he sues [or is sued].

**No. 587.—Answer—Mistake.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That when he signed the note therein mentioned, he supposed it to be for [one hundred] dollars, but, by mistake, it was drawn for [two hundred] dollars.

2. That he received no consideration for more than [one hundred] dollars.

**No. 588.—Answer—Non-joinder.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That the goods, wares, and merchandise described in the complaint were sold by plaintiff and one *C. D.* as partners, under the name of *A. B. & C. D.*

2. That the said *C. D.* is still living.

**No. 589.—Answer—Non-joinder.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That *A. B.* and *C. D.*, residing at *P.*, are tenants in common with the plaintiff in said lands, and necessary parties to this action.

**No. 590.—Answer—Non-joinder.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That after the death of said *A. B.*, and on or about the *fifteenth* day of *April, 1894*, letters of administration were duly issued to one *C. D.*, together with the plaintiff, by the Probate Court of the County of *San Diego*, and said *C. D.* thereupon duly qualified as administrator, and as such entered upon the duties of his trust, and still is such administrator.

**No. 591.—Answer—Non-joinder.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That the supposed contract [*or other cause of action*] mentioned in the complaint was made with said *V. B.*, plaintiff [*or defendant*], and one *A. B.*, jointly.
2. That the said *A. B.* is still living.

**No. 592.—Answer—Payment.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That on the *twenty-first* day of *February, 1894*, at *P.*, he paid to the plaintiff the money demanded in the complaint [*or seventy-five dollars, on account of the demand in the complaint*].

**No. 593.—Answer—Payment by Note.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That on the *twentieth* day of *April, 1894*, at *P.*, at the request of the plaintiff, he made his promissory note to one *C. D.* for *one hundred* dollars, in discharge of the indebtedness stated in the complaint.

**No. 594.—Answer—Payment by Bill.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That before this action the plaintiff drew his bill on the defendant for the amount of said account [*or other indebtedness alleged*], dated on the *twenty-first* day of *April, 1894*, and payable to the order of the plaintiff three months after said date; which the defendant then accepted.

2. That the plaintiff received said acceptance on account of said indebtedness, and afterwards, and before the same became due and payable, lost the same, and cannot produce it to the defendant.

**No. 595.—Answer—Payment in Services.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That after the said promissory note became payable, and before this action, to wit: on the *twenty-second* day of *April, 1894*, the plaintiff agreed to receive and the defendant agreed to render to the said plaintiff his services as a [*teamster*] to the amount of said note.

2. That defendant afterwards, according to the said agreement, rendered such services to the plaintiff, to the full amount due and payable on the said note.

**No. 596.—Answer—Release.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That on the *twenty-fourth* day of *April, 1894*, at *P.*, the plaintiff, by deed, released the defendant from the claim set up in the complaint.

**No. 597.—Answer—Statute of Frauds.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That no note or memorandum in writing, expressing the consideration, was ever made by any such contract as is alleged in the complaint, or of any contract whatever [*or state other facts as they exist*].

2. That he did not receive any part of the goods, wares, or merchandise mentioned in the complaint.

3. That he did not pay any part of the purchase money.

**No. 598.—Answer—Another Form.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That plaintiff ought not to have his said action; because neither defendant, nor any person by him legally authorized, did ever make or sign any contract or agreement in writing, binding this defendant to make any such conveyance of the said premises to the plaintiff as he has in said complaint demanded.

**No. 599.—Answer—Agreement not to be Performed  
Within a Year.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That although the said agreement by its terms was not to be performed within one year from the making thereof, neither said agreement, nor any note or memorandum thereof was, or is, in writing, and subscribed by the said *A. B.*, who is sought to be charged therewith, or by his lawful agent, or by any other person.

**No. 600.—Answer—Statute of Frauds—Agreement in  
Consideration of Marriage.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

That the said alleged agreement was made upon consideration of marriage, and that neither said agreement nor any note or memorandum thereof was ever in writing, and subscribed by said *C. D.*, who is sought to be charged therewith, or by his lawful agent, or at all.



**No. 601.—Answer—Ultra Vires Corporation.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

1. That the plaintiff was not and is not authorized by law to take, hold, and convey real property, except for the following purposes, and in the following manner: [*here set forth the power of the corporation*].

2. That the deed alleged in the complaint was executed and accepted on the part of said corporation, for the purpose of [*here state purpose not within the power*].

**No. 602.—Answer—Statute of Limitations.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That the cause of action set forth therein did not accrue within two years before the commencement of this action.

**No. 603.—Answer—Another Form.**

[TITLE OF COURT AND CAUSE.]

The defendant, answering the complaint, alleges:

That the cause of action stated in the complaint of the plaintiff herein is barred by the provisions of the *first subdivision of section 339 of the Code of Civil Procedure of this State* [*or insert whatever section and subdivision may be applicable to the cause of action*].

**No. 604.—Answer—Tender before Suit.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That on the *twenty-sixth day of April, 1894*, at *P.*, before the commencement of this action, he tendered to the plaintiff \$75 [*in gold and silver coin of the United States*], in payment of the [*contract, note, or indebtedness*] in the complaint set forth.

2. That the defendant has always been, and still is, ready and willing to pay the same to the plaintiff, and now pays the same into this Court [*or state the facts*].

**No. 605.—Answer—Payment as to Part, and Tender as to Residue.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. [*Allege payment of part.*]

2. That on the *twenty-seventh day of April, 1894*, at *P.*, he tendered to the plaintiff the residue of said claim, to wit: the amount of \$125, etc., [*as in preceding form*].

**No. 606.—Answer—Denial as to Part, and Tender as to Residue.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That he agreed to pay to the plaintiff \$60 only [or that the goods or services mentioned therein were reasonably worth no more than \$60].

2. That before this action, on the *twenty-eighth* day of *April*, 1894, at *P.*, he tendered to the plaintiff, in *gold and silver coin* of the United States \$60 in payment of said sum. [Continue as in preceding form.]

**No. 607.—Answer—Want of Capacity—Alien Enemy.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That the plaintiff was not, at the commencement of this action, and is not now, a citizen of the United States, but was, and is, an alien, born in *England*, out of the allegiance of the United States, and within the *Kingdom of Great Britain*.

2. That at the commencement of this action the Government of said *Great Britain* was, and still is, at war with, and is an enemy of, the United States.

3. That the plaintiff then was, and still is, an alien enemy, abiding without the United States, and at *London*, within said *Great Britain*, and adhering to the said enemies of the United States.

**No. 608.—Answer—Want of Capacity—Assignment.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That before the commencement of this action, and on or about the *twenty-eighth* day of *April*, 1894, at *P.*, the plaintiff duly assigned the subject matter and cause of action set forth in the complaint to one *B. S.*, who then was, and has been ever since, the holder thereof.

**No. 609.—Answer—Want of Capacity—Denial of Plaintiff's Corporation.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That there was not at the commencement of this action, nor is there now, any such corporation as the *M. L. Mining Company*, named as plaintiff in this action.

2. That the plaintiff was not a *de facto* corporation, nor did the persons claiming to compose the said alleged corporation, at the commencement of this action, nor at any of the times mentioned in the complaint, claim in good faith to be a corporation.

**No. 610.—Answer—Want of Capacity—Denial of Trusteeship.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That since the expiration of said first year [*or after the twenty-third day of February, 1894*], he has not been a trustee of said company, and has not in any way managed the affairs or concerns of said company as such.

**No. 611.—Answer—Denial of Subscription of Stock.**

[TITLE OF COURT AND CAUSE.]

That he never subscribed for any stock of the corporation mentioned in the complaint, and never became a stockholder in, or the holder, or owner of any stock of the said corporation, in his own right, or in trust for others.

**No. 612.—Answer—Denial of Interest—Stock Sold.**

[TITLE OF COURT AND CAUSE.]

That on or about the *twenty-fourth day of February, 1894*, he sold and transferred all his stock and interest in the said company, and that he had not then, nor has he had since that time, nor has he now, any property or interest of any nature or kind whatsoever in the said company, as stockholder, or trustee, or otherwise.

**No. 613.—Answer—Want of Capacity — Denial of Official Capacity.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and denies that the plaintiff is [executor or administrator of the said deceased, or otherwise], as alleged, or at all.

**No. 614.—Answer—Partnership of the Plaintiff.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

1. That the cause of action set forth in the complaint did not accrue to the plaintiff individually, but to the plaintiff and one *R. S.*, under the firm name [*giving name of firm*], and that said partners, as such, when this action was brought, held and owned the said cause or action jointly.

2. That the said *R. S.* is still living.

**No. 615.—Answer—Partnership of the Defendant.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

1. That the contract set forth in the complaint was not made



by him individually, but by him and one *R. S.* jointly as partners, under the firm name [*give the firm name*].

2. That the said *R. S.* is still living.

**No. 616.—Answer—Want of Consideration—Common Form.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That he received no consideration for the [promissory note] mentioned therein. [*Mistake, or any fact showing fraud, should be alleged.*]

**No. 617.—Answer—The Same—That the Debt was for Money Lost at Play.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That the defendant and the plaintiff played together at a game of chance called faro, for stakes, upon credit, and not for ready money, and at said game the plaintiff won \$35 of the defendant, which he did not pay.

2. That thereafter, the defendant gave the plaintiff the note mentioned in the complaint for said money so staked and lost.

**No. 618.—Answer—The Same—That the Note was Given to Compound a Felony.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

1. That heretofore, on, *etc.*, at, *etc.*, one *C. R.*, the son of the said defendant, had feloniously [*here designate the crime—e. g., thus: stolen, taken, and carried away five hams, the property of the plaintiff*].

2. That the said defendant, in order to compound and settle said felony, gave the said note, in consideration of which the plaintiff and others desisted from informing and prosecuting upon said felony.

3. That there was no other consideration for said note.

**No. 619.—Answer—Want of Jurisdiction of the Person.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That he was, at the commencement of this action, and is now, Consul of *Italy*, for the *City of New York*, duly accredited to the President of the United States, and by him received and acknowledged as such [*or otherwise*].

**No. 620.—Answer—The Same—By Foreign Corporation.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

1. That the defendant [*foreign corporation*] is a corporation created by the laws of the *Kingdom of Prussia* [*or other foreign government or country*], and not by the laws of this State.

2. That the plaintiff is not a resident of this State, but resides at *K.*, in the *Kingdom of Prussia*.

3. That the said [*here state the facts showing that the cause of action arose without the State, and is not upon a contract made, executed, or delivered in this State*].

**No. 621.—Answer—Want of Jurisdiction of the Subject.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

That the supposed cause of action accrued to the said plaintiff, if at all, out of the jurisdiction of this Court; that is to say, at *P.*, in the County of *Butte*, and not at *R.*, in the County of *Yuba*, or elsewhere within the jurisdiction of this Court, or within the said last named county.

**No. 622.—Answer—Counter-claim Alone.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and for counter-claim alleges:

That, *etc.*, [*state a cause of action precisely as in a complaint*].

Wherefore, the defendant demands judgment for \$250.

**No. 623.—Answer—Demurrer and Answer.**

[TITLE OF COURT AND CAUSE.]

The defendant demurs [*or the defendants, naming them, if only a part of them join, demur*] to the first [*or other*] cause of action stated in the complaint, on the following grounds:

1. [*State the grounds.*]

2. And for answer to the plaintiff's complaint, the defendant alleges:

That, *etc.*

**No. 624.—Answer—Account.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

1. That after the said dealings in said complaint named, and before the commencement of this action, to wit: on the *third day of May, 1894*, the said *A. B. and C. D.* came to a mutual accounting touching the several matters and things in said complaint mentioned.

2. That on the said accounting, there was found due from the said *A. B.* to the said *C. D.* \$130, as a final balance upon said mutual dealing and matters between the said *A. B.* and *C. D.*

3. And the said *C. D.* avers that the said stated account is just and true.

Wherefore, he claims judgment against the plaintiff for said sum of \$130, and interest from said *third* day of *May*, 1894, and costs.

**No. 625.—Answer—Invalidity of an Award.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That by the terms of the agreement referred to in the complaint, the arbitrators were to hear the evidence and arguments of both parties at meetings called upon notice to both, but that they refused to hear the evidence offered by defendant, and failed and refused to give defendant notice of the said meetings, or any of them.

Wherefore, *etc.*, [*judgment may be demanded, setting aside the award, if desired*].

**No. 626.—Answer—Denial of Promise.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and denies:

That he promised or agreed, as alleged in the said complaint, or that he made any agreement in respect to the matters stated in the complaint.

**No. 627.—Answer—Controverting Plaintiff's Title.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That no part of the goods, wares, and merchandise in the complaint mentioned was the property of plaintiff when sold to defendant; but the same then was the property of one *A. B.*, and who alone, and not the plaintiff, sold the same to this defendant.

**No. 628.—Answer—Agreement to Take Note in Part Payment.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That said goods were sold and delivered to said defendant by said plaintiff on an express agreement, by and between them, that said plaintiff should accept in payment therefor a promissory note for the sum of \$68, drawn by this defendant, and dated on the *fifth* day of *May*, 1894, [*with an approved indorser*].

2. That on the *seventeenth* day of *June*, 1894, and before this action, the defendant tendered to the plaintiff such a note as



above described, indorsed by one *C. D.*, who was then, and still is, a banker, in good credit and ability, and an approved indorser, and is still ready and willing to deliver the same.

3. That the defendant refused to receive the same.

**No. 629.—Answer—Articles Furnished Defendant's Wife not Necessary.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That the articles mentioned therein were not furnished to his said [wife or child] with his consent.

2. That the same were not necessary for his [wife or child].

**No. 630.—Answer—Denial of Guaranty—General Form.**

[TITLE OF COURT AND CAUSE.]

*A. B. and C. D.*, two of the defendants in the above entitled action, separately answering the complaint of the plaintiff in this said action:

1. Deny that they, or either of them, made the written guaranty set forth in the said complaint.

2. They deny that the [ale contained in the barrels] mentioned in said complaint [did sour during its voyage], or that it was [unfit for use] when it arrived here.

Wherefore, defendants *A. B. and C. D.* pray to be dismissed, with their costs.

**No. 631.—Answer—Departure from Guaranty.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That the defendant did not agree to be answerable generally to the plaintiff for value of goods sold to the defendant, but only for goods to an amount not exceeding \$100, which limit the plaintiff exceeded in his alleged sale.

**No. 632.—Answer—Denial of Plaintiff's Interest.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That the plaintiff did not own, and had no insurable interest in, the said goods [or building, etc.] at the time of the happening of said loss.

**No. 633.—Answer—Denial of Loss.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That the said building was not destroyed [or injured] during term of said insurance by [state perils], but said loss occurred wholly by [indicate the excepted peril].

**No. 634.—Answer—Policy Obtained by Misrepresentations.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

That the defendant was induced to subscribe the policy and become an insurer, as alleged in the complaint, by the misrepresentation made by the plaintiff to the defendant of a fact then material to be known to the defendant, and material to the risk of the said policy; that is to say [*state misrepresentations*].

**No. 635.—Answer—Transfer without Insurer's Consent.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint and alleges:

1. That it is among other things provided by said insurance policy, that in case of any transfer or termination of the interest of the insured, either by sale or otherwise, of the property insured, without the consent of the company, the policy should from thenceforth be void.

2. That after the making of said policy, and before the loss alleged, the interest of the said [insured] in said [*things insured*] was terminated and transferred, and the title thereto vested in said plaintiff, without the consent of the defendants.

**No. 636.—Answer—Unseaworthiness of Vessel.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint and alleges:

1. [*Allege provisions of policy unless it appears by the complaint.*]

2. That at *P.*, and in the course of said voyage, and in reference to the said voyage, and to any damage which the said ship sustained in the prosecution thereof, a regular survey was had on the *sixth* day of *May, 1894*, upon which survey the said ship was thereby declared unseaworthy, by reason of her being rotten [*or state particulars showing a ground of condemnation wholly within the provisions of the policy*].

**No. 637.—Answer—Invalidity of Judgment Against Non-resident.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

1. That the action in which the supposed judgment against him was alleged to have been recovered arose upon an alleged contract.

2. That when the action was commenced, this defendant was a non-resident of the State of *California* and a resident of *Illinois*.

3. That he never appeared in that action, and never was per-

sonally served in the State of *California*, or elsewhere, with summons therein.

4. That no order for publication of the summons in that action was ever made [*or state other facts showing failure to obtain jurisdiction*].

**No. 638.—Answer—Fraud in Obtaining Judgment.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

1. That after the commencement of the action mentioned in the complaint, the said plaintiff came to this defendant, and with intent to deceive him and prevent him from defending it, falsely and fraudulently represented [*here state the false representations, detailing the fraud fully and explicitly*].

**No. 639.—Answer—Accounting and Payment.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

1. That on the *eighth* day of *May*, 1894, at *P.*, he accounted with and paid over to the plaintiff all money received by him up to that day, as such agent of the plaintiff.

**No. 640.—Answer—Accounting and Payment.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. For a first defense:

I. He denies each and every allegation in said complaint, except what is hereinafter admitted.

II. The defendant admits that said plaintiff did, at the request of defendant, enter into the service of the defendant as stated in the complaint, but alleges that he did account with said plaintiff on the *ninth* day of *May*, 1894, at *P.*, and that on the said accounting there was found due said plaintiff only the sum of \$40.

2. For a second defense, defendant alleges that after said accounting in the first defense alleged, to wit: on the *fifteenth* day of *May*, 1894, he paid to the plaintiff the said sum of \$40 so found due upon said accounting, and the plaintiff received and accepted the same in full satisfaction of his said claim.

**No. 641.—Answer—Denial by Assignee.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That said [lessee] did not hire the premises from the defendant as alleged; and that no assignment of any such lease was made to or accepted by the defendant, as alleged; and that the defendant did not occupy the premises under the alleged lease, or under any lease.



**No. 642.—Answer—Assignment to Third Person.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That before the rent claimed in the complaint became due, and on or about the *tenth* day of *May, 1894*, the defendant assigned all his interest in said lease to one *C. D.*, who then entered into possession, and so continued when said rent became due.

**No. 643.—Answer—Eviction.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That on the *eleventh* day of *May, 1894*, the plaintiff evicted him from the premises mentioned in the complaint, and has ever since kept him out of the possession thereof [*or state the facts*].

**No. 644.—Answer—Surrender.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That on the *twelfth* day of *May, 1894*, he surrendered to the plaintiff the premises mentioned in the complaint, and the plaintiff accepted the same.

**No. 645.—Answer—As to One Installment.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That to the last installment mentioned in the complaint the defendant alleges that after the alleged lease was made [*or after the alleged letting*], and before said installment became due, the plaintiff evicted him from the premises, and has ever since kept him out of the possession thereof.

**No. 646.—Answer—Acceptance was Unauthorized.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

That the said bill was made without the authority or consent of these defendants, and out of the course of their regular business, and, without consideration to them, accepted in their name by one *A. B.*, fraudulently pretending to act under their authority, but who in fact had no authority to accept the same.

**No. 647.—Answer—Denial of Presentment.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

That the bill mentioned therein was never presented to *A. B.*, as alleged, or at all.

**No. 648.—Answer—Acceptance was for Accommodation.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

That he accepted the bill mentioned in the complaint for the accommodation of the plaintiff; and that there was never any value or consideration for the acceptance or payment of said bill by the defendant.

**No. 649.—Answer—Denial of Acceptance, Presentment, and Protest.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

That the bill of exchange mentioned in the complaint was not presented for acceptance nor accepted, as alleged, or at all, and that it was not presented for payment, nor was it protested for non-payment.

**No. 650.—Answer—Excuse for Non-Presentment.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and denies:

That any search was made when the said bill of exchange became due, to discover the residence and person of the said *A. B.*, at *P.*, or elsewhere, or at all, in order that the said bill might be presented to the said *A. B.* for payment.

**No. 651.—Answer—Payment before Indorsement.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That after the bill mentioned in the complaint was due, to wit: on or after the *thirteenth* day of *May, 1894* [*date of maturity*], and while said [drawer] was the holder thereof, and before this action, the defendant satisfied and discharged the principal and interest [and damages] due on said bill, by payment to the said [drawer].

2. That said [drawer] indorsed said bill to the plaintiff after said payment and after the maturity thereof.

**No. 652.—Answer—Denial of Notice of Dishonor.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That notice of dishonor of the note [or bill of exchange] mentioned in the complaint, was not given to him.

**No. 653.—Answer—Alteration of the Instrument.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That after the making [or acceptance] and issue of said note [or bill], and before this action, the same was materially altered, without the consent of the defendant, by adding the signature of A. B. as a joint maker thereof [or by cutting off the signature of A. B. as a joint maker thereof; or by adding the words "payable at sight"; or otherwise, as the case may be].

**No. 654.—Answer—Usury as a Defense upon a Note.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That the note mentioned therein was given to the plaintiff in pursuance of a mutual agreement, between the plaintiff and defendant, that the plaintiff should lend the defendant money at the rate of [ten] per centum per annum.

2. That the defendant received from the plaintiff \$200 only as a consideration for the said note, the plaintiff retaining \$10 as interest thereon.

**No. 655.—Answer—That the Note was for Goods Sold by Means of Deceit.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. [*Allege sale as in case of an action for damages for deceit.*]

2. That said note was given to the plaintiff without any other consideration than said [sale].

That immediately on discovering said fraud, the defendant rescinded said [contract], and tendered to the plaintiff all that he had received under said contract, upon condition of his returning said note, which the plaintiff refused to do.

**No. 656.—Answer—Illegal Interest in Note.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

As to the sum of \$20, parcel of said sum of \$220, in said complaint demanded, the said defendant admits that he owes the said sum of \$200 to the said plaintiff, but as to the sum of \$20, the residue of the said sum of \$220, the said defendant says that the said promissory note, in the complaint mentioned, was given by the said defendant to the said plaintiff for the loan of \$200 for two years, and no more, and that the said sum of \$20 was included in said note as interest on the said sum of \$200 for the said term of two years, at the rate of five per cent. per annum.



**No. 657.—Answer—Fraud—Note Procured by Fraud.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

1. That at the time the note in the complaint set forth was made, he was indebted to one *E. F.*, by book account, in the sum of \$250.

2. That the plaintiff at the time falsely and fraudulently represented to the defendant that he was the owner and assignee of said account and indebtedness, and thereby, and without any consideration whatever, induced the defendant to make said note to him in satisfaction and discharge of said account.

3. That the said representations were false, and that the plaintiff never was the owner or assignee of said account, nor had he any beneficial interest in the same.

4. That the defendant was misled by said false representations [or that the belief of the defendant in the truth of said representations induced him to make said note].

**No. 658.—Answer—Breach of Warranty.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That the said note was not, before it became due, transferred and delivered to the plaintiff for value.

2. That the said note was made and delivered by the defendant to one *A. B.*, who was at that time an agent or servant of the plaintiff, and acting as such on behalf of the plaintiff in that transaction, in exchange for a quantity of cigars, which were sold by sample to the defendant at that time by said *A. B.*, as such agent.

3. That when said cigars were delivered to this defendant, they did not correspond with the samples, and were not worth more than \$200.

4. That as soon as the defendant learned the character of said cigars, he offered to said *A. B.*, as such agent, to return them, which he is still ready and willing to do.

Wherefore, the defendant claims to recoup \$150, his damages in this behalf, from the amount of the said note.

**No. 659.—Answer—Work not Finished, and Architect's Certificate not Obtained.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That the said work was not completed in a good and workmanlike manner, on or before the day limited therefor in the contract set forth in the complaint; but, on the contrary, the said work on that day, and from thence to the commencement of this action, was, and still is, incomplete and unfinished.

2. That no certificate from the said architect, that the said work had been completed to his satisfaction, was obtained by the plaintiff before this action.

**No. 660.—Answer—Denial of Offer to Perform.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That at the time fixed by the agreement referred to in the complaint, the plaintiff was not ready or willing, or in a condition, to receive the merchandise mentioned in the said agreement [or any part thereof].

**No. 661.—Answer—Denial of Breach of Contract.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

That the defendant duly performed said covenant [*or all the conditions of said contract*] on his part; and [*here state performance, pursuing the words of the covenant, if it be in the affirmative; and stating particular acts, if it be done in the alternative, in any case where this can be done without too great prolixity*].

**No. 662.—Answer—Denial of Plaintiff's Performance.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That the plaintiff has not performed the conditions of said agreement on his part; but, on the contrary, has wholly omitted [*here state breach*].

**No. 663.—Answer—Performance by Defendant.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That he made the said [*articles*] furniture, and on the *fifteenth* day of *May, 1894*, delivered the same to the plaintiff, in every respect as agreed.

**No. 664.—Answer—Excuse for Non-performance.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That at the time of making said agreement, the plaintiffs agreed with this defendant, that in consideration that he would deliver to them at their store in *P.* [*state what*], they, the said plaintiffs, would pay this defendant [*state amount, and when and where to be paid*].

2. That the said plaintiffs failed and refused to pay the same on the delivery of said articles at said store.

**No. 665.—Answer—Denial of Performance.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and denies:

1. That the plaintiff performed the conditions, or any of the conditions, on his part, in the said agreement referred to in the complaint.

2. [*Allege negligence in defending the action for which he was sued, and want of notice to the defendant of the pendency of the same*].

**No. 666.—Answer—Denial of Breach of Promise to Marry.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and denies:

That the defendant has refused to marry the plaintiff, but avers that on the *sixteenth* day of *May, 1894*, and ever since, he has been ready and willing to marry her, but at the date above mentioned, and at all times since then, the plaintiff has refused to marry this defendant.

**No. 667.—Answer—Explaining the Contract, and Showing a Breach as to Delivery.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That it was a part of the agreement referred to in the complaint that the plaintiff should deliver the goods sold at *P*.

2. That the said goods have not been so delivered.

**No. 668.—Answer—Breach of Warranty by Plaintiff.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That the goods therein mentioned were warranted by the plaintiff to be genuine French broadcloth.

2. That they were not genuine French broadcloth.

**No. 669.—Answer—Breach as to Quality.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That it was a part of the agreement referred to in the complaint that the wheat therein mentioned should be of a first-class milling quality.

2. That the said wheat was not of a first-class milling quality, but [*state wherein the quality was defective*].



**No. 670.—Answer—Breach of Warranty.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That the plaintiff warranted the property therein mentioned to be free from incumbrances.

2. That there was then, and still is, a mortgage on the same, in the sum of \$250, unsatisfied, of record in *Book B*, page 19, of *Mortgages*, in the office of the Recorder of the County of *Yolo*, in this State, and the same then was and still is a valid and subsisting lien and incumbrance upon the said premises.

**No. 671.—Answer—Failure of Consideration.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That he gave said undertaking to said *A. B.* solely in consideration of the performance by said *A. B.* of the covenants and conditions, upon his part, in an agreement then made between them, of which agreement a copy is annexed as a part of this answer.

2. That this defendant duly performed all the conditions thereof on his part.

**No. 672.—Answer—General Denial.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That the defendant has not committed the acts alleged, or any one of them [or the defendant denies each and every allegation thereof].

**No. 673.—Answer—Self-defense.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That the plaintiff first assaulted the defendant, who thereupon necessarily committed the acts complained of, in self-defense.

**No. 674.—Answer—Acts Done to Preserve the Peace.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

1. That the defendant did not strike or wound the plaintiff.

2. That at the time mentioned in the complaint the plaintiff made an assault on one *B.*, and was then and there beating him.

3. That thereupon the defendant, in attempting to preserve the peace, and prevent the plaintiff from further so doing, gently laid his hands upon the plaintiff, by which plaintiff suffered no injury.

4. That the acts above mentioned are the same of which the plaintiff complains.

**No. 675.—Answer—Defense of Possession of Dwelling.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. [*Deny beating and wounding.*]
2. The defendant further alleges that at the time mentioned in the complaint the defendant was lawfully possessed of [*here designate the dwelling*].
3. That the defendant being so possessed thereof, the plaintiff was unlawfully therein, and [*state unlawful acts he was doing*].
4. That thereupon the defendant, in defense of the possession of his dwelling, gently laid his hands upon the plaintiff in order to remove him, as he lawfully might.
5. That the acts above mentioned are the same of which the plaintiff complains.

**No. 676.—Answer—The Same—Resistance to Entry.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

- 1 and 2. [*As in preceding form.*]
3. That the plaintiff then and there, with force and violence, attempted to break into the said dwelling [*or other possession*], without the leave and against the will of the defendant.
4. That the defendant thereupon, in order to preserve the peaceable possession thereof, resisted the plaintiff's entrance, and, in doing so, necessarily assaulted and beat the plaintiff, as he lawfully might; and, if the plaintiff sustained any damage, it was occasioned by his own wrong.
5. That the acts above mentioned are the same of which the plaintiff complains.

**No. 677.—Answer—Justification by Captain of Vessel.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That as to the alleged assaulting, beating, and ill-treating the plaintiff, the defendant was, at the time thereof, captain of the ship called the *P. D.*
2. That the plaintiff was then on board of said ship as a seaman [*state excuse for beating him, such as mutiny, etc.*].
3. Wherefore, the defendant, for the preservation of the peace, and to preserve due order on said ship [*state what was done*].

**No. 678.—Answer—Denial of Want of Probable Cause.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That the defendant did not falsely or maliciously, or without probable or reasonable cause, cause the plaintiff to be arrested; nor did he cause plaintiff to be arrested at all.

**No. 679.—Answer—Justification of Arrest upon Suspicion of a Felony.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That immediately before the time mentioned in the complaint a felony was committed [*briefly state the felony and causes of suspicion against the plaintiff*].

2. That thereupon the defendant, who was then and there Sheriff of the County of *Butte*, having reasonable cause to suspect the plaintiff of having committed such felony, arrested him and brought him before *J. P.*, a Justice of the Peace of *Butte* [*or other magistrate*], to be dealt with according to law.

3. That the above acts are the same of which plaintiff complains.

**No. 680.—Answer—Of Arrest Under Criminal Process.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That before and at the time of the committing of the alleged trespasses, he, the said defendant, was a Constable [*or Sheriff*] within and for the Town [*or County*] of *B*.

2. That a warrant was duly issued by one *A. B.*, under his hand and seal, and directed to any Constable [*or Sheriff*] of said *B.*, which then was delivered to this defendant as such Constable [*or Sheriff*], to be executed; whereby he was commanded to arrest the said plaintiff and bring him forthwith before said Justice [*or state before whom*] there to answer to the charge of having feloniously stolen and carried away the goods and chattels of one *C. D.*, to the value of \$50 [*setting forth the tenor of the writ or warrant according to its effect*].

3. That the said *A. B.* then was a Justice of the Peace, within and for the Town of *B.*, duly elected and qualified, and acting as such.

4. That by virtue of the said warrant so issued, he, the said defendant, did arrest the said plaintiff, and had him in his custody until he was discharged [*or state facts*].

**No. 681.—Answer—Justification by Officer of Same.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That at and immediately before the time mentioned in the complaint, the defendant was a Constable in the Town of *P*. [*or designate other official character*].

2. That he was then informed by [*here state sources of information*], that a felony had been committed, in the robbery of [*state felony, and the grounds for suspicion of the plaintiff*].



3. That thereupon, believing such information to be true, and acting thereon, as was his duty to do, he arrested him, and brought him before *J. P.*, a *Justice of the Peace of P.*, [or other magistrate], to be dealt with according to law.

4. That the above acts are the same of which plaintiff complains.

**No. 682. — Answer.—Mitigation—Allegation of Republication of Matter as News.**

[TITLE OF COURT AND CAUSE.]

And in mitigation of damages to which the plaintiff might otherwise appear entitled by reason of the publication of the said supposed libelous article, this defendant alleges that all the matters and things stated under the second defense were, on the first day of *March, 1894*, at *P.*, currently reported and believed in, and were published in a certain newspaper, called the *News*, published in *P.*, and were so communicated to this defendant, and were published by him as matters of current public news, the defendant verily believing the same to be true.

**No. 683. — Answer — Justification — Truth of Publication when the Charge is Specific.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

That the charge and supposed defamatory words in the complaint set forth, are each and all of them true.

**No. 684.—Answer—When the Charge is General.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint and alleges:

That on the *eighteenth* day of *May, 1894*, at *P.*, the plaintiff stole from the defendant one bale of hay, to which the defendant referred when speaking [or printing, or writing] the words stated in the complaint.

**No. 685.—Answer—Justification and Denial of Malice, in Charge of Larceny.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That each and every article in the complaint mentioned as having been charged by defendant to have been stolen by the plaintiff, had, at the time mentioned in the complaint, been taken and stolen from the defendant.

2. That the defendant is informed and believes that the plaintiff has been, and is, guilty of each and every charge in said complaint alleged to have been made against her by the defendant, and that whatever the defendant has said of or concerning the

plaintiff, she has said in the full belief of its truth and verity, and in self-vindication and warning to others, and not from any motives of malice towards the plaintiff.

**No. 686.—Answer—Setting up a Defense and Mitigating Circumstances.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

*First*—For a defense:

That the publication complained of was true. [*If the alleged libel was not specific in its charges, state the facts upon which it was founded.*]

*Second*—As mitigating circumstances:

1. That on the *second* day of *February*, 1894, the plaintiff accused one *B. C.* of burglary at *P.*

2. That thereupon an officer of the police of *P.* took the said *B. C.* into custody, and conducted him to a station-house.

3. That while at the station-house, the said *B. C.* made to the Captain of Police there in command a statement, which is fairly and truly reported in the publication complained of [*or made a statement to the effect that the robbery with which he was charged was planned by the plaintiff, and was effected by him and the plaintiff in concert; that they quarreled over the division of the plunder, and that thereupon the plaintiff charged him with the felony*].

4. That afterwards the plaintiff was arrested by a police officer, and conveyed before *J. P.*, a *Police Justice* of the city of *P.*, and held to bail by the said Justice, to answer the charges of the said *B. C.*

5. That the publication complained of contained a fair and true statement of the preceding circumstances.

6. That it was published in a newspaper belonging to the defendant, by his employees, without his knowledge or consent.

7. That the persons publishing it inserted it as an item of public news, without malice, believing the same to be true.

**No. 687.—Answer—Privileged Publication.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint and alleges:

1. That on the *twentieth* day of *May*, 1894, at *P.*, an action was tried in the Superior Court of *P.*, in which *A. B.* was plaintiff, and the plaintiff herein was defendant [*or an indictment having been found against the plaintiff for libel, he was tried therefor in the Superior Court; or otherwise, as the case may be*].

2. That the article published in the defendant's newspaper, mentioned in the complaint, was a fair and true report of the testimony of one of the witnesses, named *E. F.*, made in the course of the said trial.

**No. 688.—Answer—Privileged Communication.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

1. That at the time of publishing the words mentioned in the complaint, an action was pending in the Superior Court between [*the parties to this action*].

2. That at that time this defendant applied to *B. C.*, the Judge of the said Court, for an order to *take the deposition of A.*, and upon his application presented to the said Judge an affidavit containing the words complained of, which said affidavit was pertinent to the said application.

3. That the defendant did not in any other way publish the said words.

**No. 689.—Answer—Privileged Communication.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

1. That he was at the time of uttering the words mentioned in the complaint the confidential clerk of *A. B.*

2. That the said *A. B.* inquired of the defendant the character of the plaintiff, with a view of employing him as a clerk [*or as the case may be*], and the defendant then stated to him the matter referred to in the complaint.

3. That the defendant had probable cause for believing, and did believe, the same to be true.

**No. 690.—Answer—Negligence—Denial of Ownership and Possession.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

That at the time of the grievance alleged the defendant was not the owner, and had not the possession or control of the premises in which said hole or hatchway was [*or that the said horse and carriage alleged to have been injured were not the property of the plaintiff*].

**No. 691.—Answer—Plaintiff's Own Negligence.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

That the defendant and his servants exercised due care and diligence about the construction of the said building [*or in repairing said street, and replacing the pavement thereof; or in guarding the said excavations with proper bulwarks, and in putting up lights during the nighttime; or otherwise, according to the allegations in the complaint*], and that said injury was not caused by any negligence on the part of the defendant or his servants, but was owing to the negligence and fault of the plaintiff himself.



**No. 692.—Answer—Denial of Possession of Vicious Dog.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That he does not own the said dog, and never did; and that he was not the possessor of the said dog at the time of the grievances alleged, nor at any other time, before or since the said alleged grievances.

**No. 693.—Answer—Denial of Scienter.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That at the time of the grievances alleged the defendant did not know, and had no reason to believe, that said dog was accustomed to bite mankind, or was of a mischievous nature [*or otherwise, according to the allegations of the complaint*].

**No. 694.—Answer—Denial of Bailment.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That said goods described in the complaint were not the property of the plaintiff, and were not deposited with the defendant by him or his agents.

2. That the same was the property of one *A. B.*, to whom the possession of them belonged when this action was brought.

**No. 695.—Answer—Denial of Being a Common Carrier.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That he is not now, and was not at the time mentioned in the complaint, or at any other time, a common carrier.

**No. 696.—Answer—Denial of Employment.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That he did not undertake or agree to carry the said goods to *P.*, nor to deliver them to *A. B.*, and that said *A. B.* never paid him, nor agreed to pay him, any reward for such service.

**No. 697.—Answer—Denial of Receipt of Goods.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That said *A. B.* never delivered to him the said goods mentioned in said complaint, and that he never received the same, or any of them.

**No. 698.—Answer—Denial of Loss.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That he denies, on his information and belief, that said goods were lost to the said *A. B.*, and denies that he was negligent in and about the transporting, storing, or unloading of the same.

**No. 699.—Answer—That the Contract was Special.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That the goods mentioned in the complaint were delivered by the plaintiffs to, and received by, the defendants, upon a special contract between them, whereby it was provided that [*state terms of contract*].

**No. 700.—Answer—Damage by Plaintiff's Fault.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That the goods mentioned in the complaint were a dangerous and explosive substance known as *nitro-glycerine*, which the plaintiff then well knew, but which the defendant did not know, and could not reasonably be expected to know.

2. That the plaintiffs did not inform the defendant of the destructive nature of the goods, and negligently delivered the same to the defendant in bulk, and thereby induced the defendant to believe that the same might be placed in with other goods, casks, and boxes, without danger or injury.

3. [*State special contract, if any, which was thereby violated.*]

**No. 701.—Answer—Denial of Negligence in Sale.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

That he was not negligent in and about selling said goods, but sold the same with due diligence, and for as large a price as he could obtain.

**No. 702.—Answer—Denial of Negligence in Giving Credit.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That he sold said goods to one *A. B.*, who was a merchant at *P.*, in good standing and credit, for the sum of \$1000; and for the payment of said sum he took the bill of the said *A. B.*, drawn on and accepted by one *C. D.*, payable in three months after date, which bill was at the time held and considered an approved bill.

**No. 703.—Answer—Collision on Highway.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That at the time mentioned in the complaint, the defendant was driving his carriage in the highway, and the horse of the plaintiff, being at the same time there, was so carelessly, negligently, and improperly managed by the plaintiff, that by reason thereof the carriage of the defendant, without any fault on the part of the defendant, and by want of due care in the management of his horse by the plaintiff, was driven against said horse, and thereby said horse sustained the injury alleged; and that if any damage happened to said horse, it was caused by such accident, and not by the fault of the defendant.

**No. 704.—Answer—Slander of Title.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. The defendant avers that the words charged in the complaint to have been spoken, and each of them, were and are true.

2. Defendant denies that, by the words alleged in the complaint to have been spoken by him, the plaintiff was injured in any manner, or to any amount whatever.

3. And the defendant denies that the said words were uttered maliciously.

**No. 705.—Answer—Justifying Trespass—Fences Defective.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

1. That the plaintiff and defendant occupy farms contiguous to each other, and separated by a fence which the plaintiff was bound to keep in repair. The plaintiff neglected to keep the fence in repair, by means whereof the cattle of the defendant escaped over the fence and on to the premises of the plaintiff, and thereby the defendant committed, by his cattle and without his fault, the supposed injury set forth in the complaint as done by the defendant's cattle.

2. That the defendant, as soon as he had notice of the escape of his cattle, entered upon the plaintiff's premises to, and did, drive them out, doing no unnecessary damage, which is the alleged trespass committed by the defendant, as set forth in the complaint.

**No. 706.—Answer—Justification of Rebuilding Fence.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

1. That the fence mentioned in the complaint was a part of the division fence upon the line between the lands of the plaintiff



and of the defendant, which, by a previous agreement between them, the defendant was bound to make and keep in repair.

2. That he took up and removed the part of said fence which he was bound to repair, and replaced the same with a new fence.

**No. 707.—Answer—Trespass of Chattels—Denial of Breaking.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That the defendant did not break into nor enter the premises of the plaintiff as alleged, or in any other manner.

**No. 708.—Answer—Justifying Trespass, by Virtue of Requisition of Claim and Delivery.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That at the time mentioned in the complaint the defendant was Sheriff of the County of *Butte*, in this State, duly elected and qualified as such.

2. That in an action brought by one *M. N.* against one *O. P.*, in the Court of *Butte* County, to recover the possession [*among other things*] of the property mentioned in the complaint in this action, said *M. N.* delivered to this defendant an affidavit made by him [*or made in his behalf*], and a notice indorsed thereon, describing the property mentioned in the complaint, and requiring this defendant to take the same from said *O. P.*, and deliver it to said *M. N.*; and at the same time delivered to this defendant, as such Sheriff, a written undertaking as required by law in such case, of which affidavit, notice, and undertaking copies are hereto annexed as part of this answer.

3. That by virtue of said proceedings the defendant took and detained the goods mentioned in the complaint, which are the acts of which the plaintiff complains.

**No. 709.—Answer—Justification under Execution.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

1. That at the time mentioned in the complaint the defendant was Sheriff of the County of *Napa*, in this State, duly elected and qualified as such.

2. That heretofore, in an action in [*state the Court*], wherein *A. B.* was plaintiff, and *C. D.*, the plaintiff herein, was defendant, judgment was, on the *third* day of *March*, 1894, rendered in favor of the said *A. B.*, plaintiff in said action, against the said *C. D.*, defendant therein, for the sum of \$500, as by the judgment roll in said action, on file in the office of the County Clerk, more fully appears.

3. That afterwards, on the *seventeenth* day of *March*, 1894, execution against the property of *C. D.*, based upon such judgment, was issued, and directed to and delivered to this defendant, as Sheriff of the said County of *Napa*, for service, whereby, after containing the statement and recital of the matters by law required to be stated and set forth in such case, and after setting forth that the sum of \$500 was then actually due on the said judgment, this defendant was in substance commanded to satisfy the said judgment out of the personal property of said judgment debtor within this defendant's county; or, if sufficient personal property could not be found, then out of the real property in this county belonging to such judgment debtor, and to return the said execution within *sixty days* after its receipt by him, as required by law.

4. That under and by virtue of the said execution this defendant, as Sheriff of the said County of *Napa*, and not otherwise, levied upon certain goods and chattels, of the character and description of those mentioned and described in the complaint, and took the same into his custody, which defendant believes to be the goods and chattels referred to in the complaint, and that the said levy, and taking, and detention, as aforesaid, constitute the supposed wrongful taking in the complaint alleged.

5. And this defendant, upon his information and belief, avers that the goods levied on, as aforesaid, were, at the time of said levy, the property of the said *C. D.*

**No. 710.—Answer—Justification of Breaking into Plaintiff's House by Virtue of Search Warrant.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

1. That at the time mentioned in the complaint, one *A. B.* was a Justice of the Peace of the Town of *P.*, in the County of *Yuba*, and was authorized to issue, and did issue, a warrant in writing, under his hand and seal, directed to any Constable of the said town, reciting that, whereas, information, on oath, had been given to him, the said *A. B.*, a Justice of the Peace, as aforesaid, by one *C. D.*, of *P.*, that [*specify the goods*] had lately been feloniously taken and carried away by *E. F.*, from, *etc.*, and that the said goods, or a part thereof, were then concealed in a cellar of *L. M.*, at *P.*, and the said Justice did, in and by the said warrant, in the name of the People of this State, command and authorize them, the said Constables, or any of them, with proper assistance, in the daytime, to enter into the cellar of the said *L. M.*, at *P.*, and there diligently search for the said goods, and if the same or any part thereof should be found, then the said Constables were, in and by the said warrant, likewise commanded to bring the same, so found, together with the said *L. M.*, or the person in whose custody the same should be found, before him, the

said Justice, or some other Justice of the Peace of said town, *etc.*, to be dealt with as the law directs.

2. That said warrant was delivered to *G. H.*, one of the defendants, who then was one of the Constables of the said town, to be executed according to law, by virtue of which he went to the cellar of the said *L. M.* mentioned in the warrant, and which was part and parcel of, and belonged to, the dwelling-house mentioned in the complaint, and there, finding the door thereof shut and fastened, did, in a friendly and peaceable manner, demand and require that the said door should be opened, which was then and there refused; and that thereupon the said *G. H.*, one of the defendants, in order to execute the said warrant, did break open the said door, doing as little damage as possible, and did search there for said goods, and took and carried away therefrom [*specify the goods*], being part of the said goods mentioned in the said warrant, and brought the same before the said Justice, as he might lawfully do, which are the acts of which the plaintiff complains.

### No. 711.—Answer—Lien upon Goods Detained.

[TITLE OF COURT AND CAUSE.]

1. That on the *twenty-second* day of *May*, 1894, the plaintiff deposited the goods mentioned in the complaint with the defendant for storage, agreeing to pay for the same *one* dollar per *ton* per *month*.

2. That the defendant has always been, and still is, ready and willing to deliver the said goods to the plaintiff, upon the payment of the storage money due.

3. That the plaintiff has not paid or tendered to the defendant the storage money due.

### No. 712.—Answer—Lien for Services.

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges :

1. That said goods were manufactured by the defendant, as tailor, and that he detained them by virtue of his lien as a mechanic and the manufacturer thereof, as security for the payment of \$100, which is the amount due him from the plaintiff for work and labor in manufacturing them.

2. That defendant has always been, and still is, ready and willing to deliver the said goods to the plaintiff upon receiving the said amount.

3. That the plaintiff has not paid or tendered to the defendant the said amount of \$100 due thereon.

### No. 713.—Answer—Claim and Delivery.

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and denies:

1. That the plaintiff, at the time stated in the complaint, or



ever, or at all, was in possession, or entitled to the possession, of the goods described in the complaint, or any of them.

2. Denies that said goods, or any of them, are or ever were the property of the plaintiff.

3. Denies that said goods are or were, at the time alleged, or at any time since, of the value of \$75, or any amount greater than \$75.

#### **No. 714.—Answer—Defendant Part Owner.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

That at the several times mentioned in the complaint the defendant was, and still is, the owner of an undivided half of said goods, wares, and merchandise, and defendant was then, and still is, in the possession of the whole of said goods.

#### **No. 715.—Answer—Justification of Taking by Defendant as Sheriff.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

1. That on the *fifth* day of *March*, 1894, one *John Doe* was, and from thence until the *sixth* day of *August*, 1894, remained, the sole owner of all the property described in said complaint.

2. That on the *tenth* day of *March*, 1894, an action was duly commenced by one *C. D.* against the said *John Doe*, in the Superior Court of the County of *Napa*, State of *California*, to recover the sum of \$550, alleged to be due for [state object of action].

3. That on the said date a summons, in due form, was issued in said last named action, and on said date was duly served upon said *John Doe* by the defendant, as the Sheriff of the County of *Napa*, by delivering to him personally a true copy thereof, attached to a copy of the complaint therein, at the [state place].

4. That on said date a writ of attachment was duly issued in due form in said last named action, after the issuance of the summons therein, and placed in the hands of the defendant, as Sheriff, as aforesaid. That on said date said Sheriff delivered a true copy of said writ of attachment to *E. F.*, in whose possession the property described in said complaint then was, together with a written notice signed by said Sheriff, indorsed on said copy of said writ of attachment, and directed to said *E. F.*, notifying him that all the moneys, goods, credits, effects, debts due or owing, or any other personal property in his possession, or under his control, belonging to said *John Doe*, were attached by virtue of said writ of attachment, and not to pay over or transfer the same to any one but him, the said Sheriff.

5. That thereafter, and on the *fifth* day of *April*, 1894, judgment was duly made, rendered, and entered in said last named

action, in said Superior Court, against said *John Doe*, and in favor of said *C. D.*, for the sum of \$550.

6. That on the *fifteenth* day of *April, 1894*, an execution was duly issued in due form in said Superior Court, under and by virtue of said judgment, which execution was on said last mentioned date placed in the hands of the defendant as Sheriff, for service.

7. That said Sheriff executed the same by delivering to said *E. F.*, personally, on the *seventeenth* day of *April, 1894*, at *P.*, a true copy of said execution, and a notice in writing, notifying said *C. D.* that all moneys, goods, credits, effects, debts due or owing, or any property in his possession or under his control, belonging to said *John Doe*, were levied upon by virtue of said writ of execution, and not to pay over or transfer the same to any one but him, the said Sheriff, and by delivering to the said *John Doe*, personally, on the *twenty-seventh* day of *April, 1894*, at *P.*, a true copy of said writ of execution and notice, together with a description of the property levied upon.

8. That said Sheriff, by virtue of said writ of execution, duly levied upon, on the *second* day of *May, 1894*, all the right, title, and interest of said *John Doe*, in and to the property described in the complaint, the same then being in the possession of said *E. F.*, and being the sole property of the said *John Doe*, by taking all of said property into his possession, and by delivering to said *E. F.*, on the *tenth* day of *May, 1894*, a true copy of said writ of execution, together with a description of all of said property, and a written notice that said property, and all the right, title, and interest of said *John Doe* therein, was levied upon, and by delivering to said *John Doe* personally, on the *thirtieth* day of *May, 1894*, at *P.*, a true copy of said writ of execution, description, and notice.

9. That said Sheriff, on the *first* day of *June, 1894*, duly advertised all of said property, in accordance with law, by posting three notices of sale, particularly describing said property, in three public places in *P.*, advertising said property to be sold at public auction in view thereof, at [state place of sale], on *August 4, 1894*, between the hours of *9 A. M.* and *4 P. M.*; and that on said day all of said described property was by said Sheriff, at the hour of *11 A. M.*, and at the place aforesaid, exposed for sale at public auction, and was sold in separate lots or parcels to the highest and best bidders, for cash; the whole thereof being sold for the sum of \$599, which said sum, less the sum of \$24, Sheriff's costs, was, on the *seventh* day of *August, 1894*, credited on said execution and judgment.

10. [Denies that plaintiff was the owner or in possession of said property.]

**No. 716.—Answer—Denial of Mortgage by Purchaser from Mortgagor.**

[TITLE OF COURT AND CAUSE.]

The defendant [purchaser] answers to the complaint:

That he has no information or belief sufficient to enable him to answer the allegations in plaintiff's complaint as to whether the defendant [mortgagor] ever executed the bond and mortgage described in the complaint, or whether the defendant [mortgagee] ever assigned said supposed bond and mortgage to the plaintiff, or whether he is now the lawful owner or holder thereof; and therefore this defendant denies that said defendant [mortgagor] at any time executed said alleged bond or mortgage, and denies that said defendant [mortgagee] at any time assigned said alleged bond or mortgage to the plaintiff, and denies that plaintiff is now the owner or holder of said alleged bond or mortgage.

**717.—Answer—Denial of Notice.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

That plaintiff did not cause his said mortgage to be recorded as alleged, or at all, and that this defendant had no notice, actual or constructive, of the existence of plaintiff's said mortgage, at or before the time this defendant took his said conveyance or incumbrance.

**No. 718.—Answer—Mortgage not Assigned.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

That the said *A. B.* did not by deed duly executed, convey all his right or title, as such mortgagee, in and to the said premises, in manner and form as the said plaintiff hath in his said complaint alleged, or at all.

**No. 719.—Answer—Non-joinder of Assignee of Mortgagor.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint and alleges:

That after the execution of said mortgage in the complaint described, and on the *fifth* day of *September, 1894*, be, by deed duly executed, conveyed said mortgaged premises in fee to one *R. S.*, who is now living and still holds said title.

**No. 720.—Answer—No Equitable Assignment.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

That the said *A. B.* did not assign or transfer to the said defendant the note in said mortgage mentioned, or the money due thereon,



in manner or form as the said plaintiff hath in his said complaint alleged, or in any manner, or at all.

**No. 721.—Answer—Equity of Redemption not Assigned.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and denies:

That the said *A. B.* did convey his equity of redemption in and to the said premises in said complaint described, in manner or form as the said plaintiff hath in his said complaint alleged, or in any manner, or at all.

**No. 722.—Answer Setting up a Judgment.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

1. That the defendant on the *sixth* day of *June*, 1894, did recover in the [*state the Court*] in and for the County of *Napa*, aforesaid, a judgment against the said *A. B.*, for the sum of \$125, his debt, and \$15, his costs in said action.

2. That the said judgment is in full force in law, and wholly due and unpaid, and is and has been a subsisting lien on said premises from the said *sixth* day of *June*, 1894.

**No. 723.—Answer—Denial of Nuisance.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That the defendant's premises have not been used as a slaughter-house, either as alleged or otherwise. Or: *That defendant did not erect said dam as alleged, or otherwise, or at all.*

**No. 724.—Answer—Denial of Waste.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

1. That defendant is not guilty of the waste and destruction aforesaid, in manner and form as the said plaintiff hath in his said complaint alleged, or in any manner, or at all.

2. That defendant does not hold the said premises under and as tenant to the said plaintiff, in manner and form as the plaintiff in his complaint hath alleged, or at all.

3. That the said *A. B.* did not demise the said premises to the said *C. D.*, in manner and form as the said plaintiff hath in his said complaint alleged, or in any manner, or at all.

**No. 725.—Answer—Specific Denials.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

1. That there is no record remaining in said Court of such recovery as the plaintiff has alleged.

2. That the said *A. B.* has goods and chattels, lands and tenements liable to execution for the satisfaction of money due on the said judgment.

3. That the said *A. B.* has no goods, or chattels, or effects of the said plaintiff in his hands.

**No. 726.—Answer—Denial that Conveyance was Fraudulent.**

[TITLE OF COURT AND CAUSE.]

That upon the making of the alleged assignment [*or mortgage*] there was an actual and continued change of the possession of the assigned [*or mortgaged*] property, from the said debtor to the transferees, who immediately after the execution of the assignment [*or mortgage*], took actual and exclusive possession of the property; and that it has at all times since the assignment [*or mortgage*] remained in their exclusive possession and control.

**No. 727.—Answer—Bona Fide Purchaser.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and alleges:

1. That the plaintiff ought not to have his action aforesaid; because he avers that the said defendant did, on the *seventeenth* day of *June, 1894*, buy of the said *A. B.* the said lands and tenements *bona fide*, for the consideration of *\$280*, he, the said *A. B.*, being then seized in fee, and in possession thereof [*here state how and when paid, and if notes were given, aver the giving of them*], and without any fraud or intent to hinder, or delay, or defraud the said *A. B.*, or the other creditors of the said *A. B.*, and without any knowledge, information, or belief, at that time or previous thereto, that the said *A. B.* sold the said premises with the intent charged in the said complaint.

**No. 728.—Answer—That the Term is not Expired.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That the partnership between him and the plaintiff, set forth in the complaint, was not upon the terms and according to the stipulations, agreements, or covenants alleged by plaintiff in his said complaint; but, on the contrary, that said partnership was formed and entered into, and carried on, under and in pursuance of a written agreement and articles of copartnership between him and said plaintiff, a copy of which is hereto annexed, and forms a part of this answer, showing that the time for the continuance of said copartnership is not yet expired, which agreement has never been altered or varied in writing or by parol; and that the copartnership formed and carried on in pursuance thereof is the same set forth and alleged in said complaint.

**No. 729.—Answer—Overdrawing Done by Plaintiff's Assent.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That he denies each and every allegation set forth in the third separate cause of action in said complaint, relative to the alleged misconduct of defendant, and his alleged acts and doings in the management of the said partnership business, except the allegation of his drawing out from the funds of said copartnership more than his portion of the profits thereof, to wit: the sum of \$287, and investing the same in, *etc.*; and as to such allegation, defendant alleges and states that it was done with the full knowledge of said plaintiff, and with his approbation and express assent.

**No. 730.—Answer—Rescission of Contract.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint:

That after the contract alleged in the complaint, and before any breach thereof, it was agreed by and between the plaintiff and the defendant that the said contract should be waived, abandoned, and rescinded; and they then waived, abandoned, and rescinded the same accordingly.

**No. 731.—Answer—For Forcible Entry and Detainer.**

[TITLE OF COURT AND CAUSE.]

The defendant answers to the complaint, and denies:

1. That plaintiff was, at the time stated, or at any time, in the actual, or peaceable, or exclusive possession of the property described in the complaint, or any part thereof.

2. Denies that defendant broke into the premises of the plaintiff, as alleged, or in any manner, or at all.

3. Denies that plaintiff suffered any damage by such alleged breaking, or in any manner, or by any means, either as alleged in the complaint, or at all. [*Traverse the allegations of the complaint specially.*]

**No. 732.—Answer—Application to Join in Action.**

[TITLE OF COURT AND CAUSE.]

*J. A.*, being duly sworn, says: That he is the owner, with plaintiff, of an undivided one-half interest in the wagon described in the complaint herein; that plaintiff and affiant purchased said wagon as partners, and that the person from whom they purchased it neglected to insert affiant's name in the bill of sale of said property, but inserted plaintiff's name only; and affiant is informed and believes, and therefore avers, that he is a proper party plaintiff herein, and he therefore prays that he may be permitted to join in this action as a party plaintiff.



**No. 733.—Answer—Application for Appointment of Guardian.**

[TITLE OF COURT AND CAUSE.]

*L. M. Y.* represents to the Court that the plaintiff in interest therein, *B. W.*, is under the age of *fourteen years* [or insane, incompetent, etc.]; that he has no general guardian; that applicant is a friend, and also the attorney for said *B. W.* in said action; and that it is necessary for said *B. W.* to have a guardian *ad litem* in said action.

Wherefore, he prays that he may be appointed guardian *ad litem* for said infant in said action.

**No. 734.—Attachment for Defaulting Juror.**

[TITLE OF COURT AND CAUSE.]

You are hereby commanded, forthwith, to attach the body of *S. L. Pike*, and bring him before the Superior Court of said *City and County of San Francisco*, to receive the judgment of said Court for failing to attend and serve as juror in said Court, after being personally served with a summons to attend.

Witness, Hon. *W. T. Wallace*, Judge of the said Superior Court, this *fourth day of January, 1894*.

(Signed by Clerk.)

**No. 735.—Bill of Clerk's Fees Due.**

[TITLE OF COURT AND CAUSE.]

*H. Kincaid*, Attorney for Plaintiff,

To *Nathan King*, Clerk of the Superior Court, Dr.

To \$23.50 Clerk's Fees due in above entitled action.

Received payment of the above, this *eighteenth day of January, 1894*.

(Signed.)

**No. 736.—Certificate of Citizenship.**

IN THE SUPERIOR COURT of the *City and County of San Francisco*,  
State of *California*.

Present: Hon. *Robert Ferral*, Judge.

In the Matter of the Application of  
*Barnaby Rudge*, an Alien,  
 To become a Citizen of the United  
 States of America. }

It appearing to the satisfaction of this Court, by the oaths of *Patrick O'Flynn* and *Timothy McGee*, citizens of the United States of America, witnesses for that purpose, first duly sworn and examined, that *Barnaby Rudge* is a native of *Ireland*, has resided within the limits and under the jurisdiction of the United States five years at least last past, and within the State of *Cal-*

*fornia* for one year last past; and that during all of said time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; and it also appearing to the Court, by competent evidence, that the said applicant has heretofore, and more than two years since, and in due form of law, declared his intention to become a citizen of the United States; and having now here, before this Court, taken an oath that he will support the Constitution of the United States of America, and that he doth absolutely and entirely renounce and adjure all allegiance and fidelity to every foreign Prince, Potentate, State, or Sovereignty whatever, and particularly to *that of the Kingdom of Great Britain*:

It is therefore ordered, adjudged, and decreed, that the said *Barnaby Rudge* be, and he is hereby admitted and declared to be, a CITIZEN OF THE UNITED STATES OF AMERICA.

OFFICE OF THE CLERK OF THE SUPERIOR COURT,  
of the *City and County of San Francisco*, }  
State of *California*.

I, *William A. Stuart*, Clerk of the Superior Court of the *City and County of San Francisco*, State of *California*, said Court being a Court of Record, having common law jurisdiction, and a Clerk and Seal, do certify that the above is a true copy of the Act of Naturalization of *Barnaby Rudge*, as the same appears upon the records of said Court, now in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this *fourth* day of *January*, in the year of our Lord one thousand eight hundred and *ninety-four*, and in the year of our Independence the *one hundred and fifth*.

### No. 737.—Certificate of Citizenship for Minor.

[TITLE OF COURT AND CAUSE.]

It appearing to the satisfaction of this Court, by the oaths of *Edwin Booth* and *Henry Swift*, citizens of the United States of America, witnesses for that purpose, first duly sworn and examined, that *M. M. Legoff* is a native of *Russia*, has resided in the United States of America three years next preceding his arriving at the age of twenty-one years, and that he has continued to reside in the United States to the present time, and has resided within the limits and under the jurisdiction of the United States five years at least last past, and within the State of *California* for one year at least last past; and that during all of said five years' time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; and the said applicant has declared his intention to become a citizen of the United States; and having now here, before this Court, taken an

oath that he will support the Constitution of the United States of America, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign Prince, Potentate, State, or Sovereignty whatever, and particularly to that of the *Empire of Russia*:

It is therefore ordered, adjudged, and decreed, that the said *M. M. Legoff* be, and he is hereby admitted and declared to be, a CITIZEN OF THE UNITED STATES OF AMERICA.

### No. 738.—Certificate of Citizenship for Soldier.

[TITLE OF COURT AND CAUSE.]

It appearing to the satisfaction of this Court, by the oaths of *Sam. B. Folger* and *Lancelot R. Keough*, citizens of the United States of America, witnesses for that purpose, first duly sworn and examined, that *Frank D. Culver* is a native of *Prussia*, and did enlist in the army of the United States, and that he was honorably discharged from the said service, and has resided within the limits and under the jurisdiction of the United States of America one year at least last past, and within the State of *California* for one year at least last past; and that during all of said time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; and having now here, before this Court, taken an oath that he will support the Constitution of the United States of America, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign Prince, Potentate, State, or Sovereignty whatever, and particularly to *that of the kingdom of Prussia*:

It is therefore ordered, adjudged, and decreed, that the said *Frank D. Culver* be, and he is hereby admitted and declared to be, a CITIZEN OF THE UNITED STATES.

### No. 739.—Certificate to Transcript.

IN THE SUPERIOR COURT of the *City and County of San Francisco*, State of *California*.

Wm. J. Heney,	}
Plaintiff,	
v.	
Charles Alpers,	}
Defendant.	

I, *Wm. A. Stuart*, County Clerk of the *City and County of San Francisco*, State of *California*, and *ex-officio* Clerk of the Superior Court, in and for the said city and county, hereby certify that I have compared the foregoing *Transcript* with the original papers in the above entitled action, now on file in my office, and with all orders therein made and entered on the minutes of said Court, and that the said *Transcript* is correct.



I further certify, that a sufficient undertaking on appeal, in due form of law, was, on the *tenth* day of *May*, 1894, properly filed in said cause.

In witness whereof, I have hereunto set my hand and affixed the seal of said Superior Court, this *twentieth* day of *June*, 1894.

#### No. 740.—Certiorari—Writ of Review.

IN THE SUPERIOR COURT of the *City and County of San Francisco*, State of *California*.

<i>John Parnell,</i>	}
Plaintiff,	
v.	
<i>John Hancock et al.,</i>	
Defendants.	

The People of the State of *California*, to *J. C. Pennie*, Justice of the Peace in and for said city and county:

Whereas, it manifestly appears to us by the affidavit of *John Parnell*, the party beneficially interested, that in a certain action pending before you, against *John Hancock and James Porter*, at the suit of said *John Parnell* against *Hancock and Porter*, you, exercising judicial functions, have exceeded your jurisdiction, and that there is no appeal nor any other plain, speedy, and adequate remedy; and being therefore willing to be certified of the said action or proceedings;

We therefore command you, that you certify fully and send to our Superior Court of the *City and County of San Francisco*, Department No. 1, at the court-room thereof, in the *City and County of San Francisco*, on the *tenth* day of *November*, 1894, a transcript of the record and proceeding in the action aforesaid, to wit: [*The complaint, summons, demurrer of defendant to the complaint, the order overruling the said demurrer, and the judgment of the Court*], with all things touching the same as fully and entirely as it remains before you, by whatsoever names the parties may be called therein, that the same may be reviewed by our said Superior Court, and in the mean time we command and require the said *J. C. Pennie*, Justice of the Peace, and his Court, to desist from further proceedings in the matter so to be reviewed.

Witness, the Honorable *A. B. C.*, Presiding Judge of the said Superior Court, in the *City and County of San Francisco*, and the seal of said Superior Court, this *eighth* day of *November*, 1894.  
(Signed by Clerk.)

**No. 741.—Commission to Take Testimony.**

IN THE SUPERIOR COURT of the *City and County of San Francisco*, State of *California*.

The People of the State of *California*, to *Henry Hill*, in *City of New York*, in the State of *New York*, Greeting:

Whereas, it appears to *the Judge of our Superior Court*, in and for the *City and County of San Francisco*, State of *California*, that *William Coe*, of the *City of New York*, in the *State of New York*, is a material witness in a certain action now pending in our said Superior Court, between *John Doe*, plaintiff, and *Richard Roe*, defendant, and that the personal attendance of said witness can not be procured at the trial of the said action, we, in confidence of your prudence and fidelity, have appointed you, and by these presents do appoint you, a Commissioner to examine said witness, and therefore we authorize and empower you, at certain days and places, to be by you for that purpose appointed, diligently to examine said witness on the interrogatories annexed to this Commission, in respect to the questions in dispute herein, and upon the interrogatories direct and cross, and upon his oath, first taken before you, and cause the said examination of the said witness, to be reduced to writing and signed by the same witness, and by yourself, and then certify and return the same annexed to this Commission, in a sealed envelope, unto our Superior Court aforesaid, directed to the Clerk thereof, by mail or other usual channel of conveyance, with all convenient speed, inclosed under your seal.

Witness, Hon. *A. B. C.*, etc.

Attest my hand and seal of said Superior Court, etc.

NOTE.—See Affidavit—Deposition of Witness in the State, and sections of the several statutes and codes immediately following the references in the notes. Also see Instructions to Commissioners, post.

**No. 742.—Complaint—To Foreclose Lien.\***

IN THE SUPERIOR COURT of the County of *San Diego*, State of *California*.

<i>The Giant Powder Company (a corporation),</i>	}	
v.		
<i>The San Diego Flume Company (a corporation), Joseph Johndrew et al.,</i>		
		Plaintiff,
		Defendants.

Comes now the plaintiff above named and for cause of action complains of the defendants [naming them all], and for cause of action alleges the following facts:

\*NOTE.—This form of complaint is unlike the published blanks in many respects. It tells its story in its own simple way. It was three times before the Supreme Court of California just as it appears in this book. It was held to be good in every instance, and the plaintiff finally prevailed. It can be varied to meet every case. The lien in the case filed with the County Recorder, will be found under the head "Liens," and the contracts in the case under that head. It is drawn to fit Cal. C. C. P., secs. 1159-75. See, also, 78 Cal. 193; 88 Id. 220; 97 Id. 264,—where the case is reported.

I. This plaintiff, the said *Giant Powder Company*, was at all the times herein mentioned, and now is, a corporation, organized and doing business under the laws of *California*, and one of the purposes for which it was organized was and is the manufacture and sale of explosives and other articles used in blasting.

II. The defendant, the said *San Diego Flume Company*, was at all said times, and now is, a corporation, organized and doing business under the laws of *California*, and one of the purposes for which it was formed was and is the construction of a flume structure, ditch, and tunnel from its diverting dam, owned by it on the *San Diego River*, in *San Diego County, California*, to its city reservoir near the *City of San Diego*, in said *County of San Diego*, which construction consisted of culverts, surface ditches, tunnels, flumes, and approaches to tunnels, and tunnels, the said structure being about fifty miles long, in said *County of San Diego*.

III. The plaintiff is ignorant of the names of the defendants, *John Doe, Richard Roe, Samuel Black, Richard Blue, Thomas Green, Jane Doe, Susan Roe, Anna Black, Emma Blue, and Kate Green*, and has therefore sued them by the foregoing names, which are fictitious, but asks when their true names are discovered that this complaint may be amended by inserting their true names.

IV. Plaintiff alleges, on its information and belief, that on and prior to the thirtieth day of *March, 1887*, the said *San Diego Flume Company* was and thence hitherto has been, and still is, the owner of the aforesaid diverting dam on said *San Diego River*, and of the flume, surface ditches, tunnel approaches, tunnels, and reservoirs aforesaid, and of the ground and right of way covered by the same for a distance of about fifty miles, in said *San Diego County, State of California*, which constitute its water works for the supplying of water to said *City of San Diego*, and the inhabitants thereof.

V. On the thirtieth day of *March, 1887*, the said *San Diego Flume Company*, defendant, as such owner aforesaid, entered into a contract in writing with defendant *Joseph Johndrew*, as its contractor, which contract was subscribed by said parties thereto by the terms of which, among other things, the contractor, *Joseph Johndrew*, agreed to do and perform certain work, in accordance with the plans and specifications to said contract attached and made a part thereof for the said *San Diego Flume Company* along its said flume line from its said diverting dam on said *San Diego River* to its said city reservoir, near *San Diego*. Said work to consist as follows:

#### FIRST — GRADING.

Grading flume bed, surface ditches, and tunnel approaches for said diverting dam on *San Diego River* to the said proposed city reservoir, near *San Diego*.

#### SECOND — TUNNELS.

Excavating of tunnels and lining of the same with masonry,



and also timbering same, in accordance with said plans and specifications.

And by the terms of said contract the said Joseph Johndrew further agreed to furnish and provide at his own cost all tools and implements of every kind and description used in and about said work, and also all material used and employed in its construction, other than lumber for tunnel lining, and also all lime and cement required to be used in accordance with said specifications, which said lumber, lime, and cement said San Diego Flume Company agreed to furnish and deliver free of cost to said Joseph Johndrew, and where the same could, without unusual delay, be delivered by said San Diego Flume Company; and the said Joseph Johndrew agreed to furnish, at his own cost, ample and suitable protection from damage by weather for all lime and cement delivered as aforesaid to him, and to begin work under said contract within ten days from the date thereof, to wit: March 30, 1887, and to complete the same on or before November 1, 1887.

The said San Diego Flume Company, by the terms of said contract, agrees, among other things, to pay said Joseph Johndrew for said work as follows, to wit: *etc.*

Payments to be made as follows: Fifty (50) per cent. cash on estimates, to be made monthly, on or about the first of each and every month, until the completion of said work, and twenty-five (25) per cent. in first mortgage six (6) per cent. twenty-year bonds of said San Diego Flume Company; remaining twenty-five (25) per cent. to be paid in said above mentioned first mortgage bonds;\* but the same to be held by said San Diego Flume Company until the full completion of the contract, and to bear no interest until delivered to said Joseph Johndrew, said bonds to be taken by him at ninety-five (95) cents on the dollar, and in no event to bear interest until delivery thereof. That afterwards, to wit: on the sixth day of June, 1887, the parties to the foregoing agreement, by a memorandum attached thereto and subscribed by said parties, agreed that said San Diego Flume Company should pay the said Joseph Johndrew for all the work theretofore done by him for said company, under the foregoing contract of March 30, 1887, according to the terms thereof, and that said Joseph Johndrew should accept the same. That thereafter, to wit: on the said sixth day of June, 1887, the said contract of March 30, 1887, together with the memorandum aforesaid attached thereto, was by the parties thereto filed in the office of the County Recorder of said County of San Diego aforesaid.

VI. Plaintiff alleges, on its information and belief, that the said Joseph Johndrew, under the said contract of March 30, 1887, commenced the work therein described, and by him agreed to be done, on the ninth day of April, 1887, and thereafter continued in the performance of said work until the tenth day of August, 1887,

\*NOTE.—The California Code of Civil Procedure provides that the contract price of all such contracts shall be payable in money. But no point having been made as to this clause, it was overlooked by the defendant, and the plaintiff did not call the Court's attention to it. If the point had been raised, plaintiff would probably have lost its lien. See C. C. P., sec. 1189.

and up to said last named day, duly performed all the conditions of said contract on his part, and had done work and furnished materials under said contract and in said constructions of the aggregate value, according to the prices aforesaid, of *over forty thousand dollars, and that there remains unpaid on account thereof the sum of forty thousand dollars, no part of which has been paid either in cash or bonds.*

VII. Full and true copies of said two contracts aforesaid and of the specifications thereto attached and therein referred to, are hereto annexed, contained in the notice of lien marked "*Exhibit A,*" and are in said lien marked "*Exhibit A,*" and they are made a part of this complaint.

VIII. Plaintiff alleges, on his information and belief, that on or about the *tenth day of August, 1887*, the said *Joseph Johndrew* stopped all work, and surrendered said contract and all his rights thereunder to said *San Diego Flume Company*, and the said company accepted the surrender of said contract, and took and accepted possession of said structure, and accepted the said structure, flumes, ditches, and tunnels, and has ever since continued in the occupation and use of the same and of said works accepted as aforesaid.

On the *ninth day of April, 1887*, this plaintiff entered into a written contract with the said *Joseph Johndrew*, as such contractor aforesaid, by the terms of which, among other things, this plaintiff agreed to sell and deliver to said *Joseph Johndrew*, at its agency, in the City of San Diego, all the powder, caps, and fuse \* needed in all the work to be done by him under his contract, or contracts, aforesaid, for said blasting and tunneling for the said *San Diego Flume Company*, and at the prices, less ten per cent. on *Giant Powder*, as follows, to wit:

And said plaintiff further, by the terms of said contract, agreed to furnish such powder, caps, and fuse in such quantities and at such times as said *Joseph Johndrew* might require, and to prepay the freight thereon, which freight should be charged to his account, and be paid by him upon monthly settlements. And by the terms of said contract the said *Joseph Johndrew* agreed to pay the prices hereinbefore stated, and at the times and in the manner following, to wit:

At the expiration of ninety days from and after the *fifteenth day of April, 1887*, for all powder, caps, and fuse used up to that time, one-third cash, and deposit with the agent of said plaintiff, at the City of San Diego, *San Diego Flume Company's* bonds owned by him, for the remaining unpaid two-thirds purchase price due at eighty-five cents on the dollar, and thereafter to pay monthly on the *fifteenth day of each and every month* during the continuance of the contract, for all further supplies of powder used by him during that month in the same manner and on the same terms, to wit:

\* NOTE.—In this case it was contended by defendant that powder, caps, and fuse were not materials used in the structure described in the complaint; but the Supreme Court, on appeal, held against the defendant. See 78 Cal. 193.



One-third cash and two-thirds in bonds of said *San Diego Flume Company*, and on completion of said contract he was to redeem all such bonds as may have been deposited by him as security for payment, by paying to the agent of plaintiff, at the *City of San Diego*, cash for the full amount of such payments, he to retain all interest that might accrue on said bonds so placed.

On the same date, to wit: April 9, 1887, this plaintiff and said *Joseph Johndrew* entered into a supplemental written contract, by the terms of which it was mutually agreed that freight on *Giant* and *Judson Powder* should be paid by plaintiff at the lowest rates possible to be obtained, and should be charged in addition to price of powders named in the foregoing contract between the parties, and the plaintiff to allow an additional ten per cent. discount from the prices and discount named in said foregoing contract on *Giant Powder*, but *Judson Powder* to be paid as therein agreed at 6½ cents per pound, with freight added, and fuse to be cash; that is, fuse to be paid for on the fifteenth of each month. Full and true copies of said two contracts are contained in the notice of lien hereto annexed, marked "*Exhibit A*," and are in said lien marked "*Exhibit B*," and they are made a part of this complaint.

X. Under the foregoing contract this plaintiff at various dates between said ninth day of April, 1887, and the tenth day of August, 1887, sold, furnished, and delivered unto said *Joseph Johndrew*, at his agency in said *City of San Diego*, to be used, and actually used, in said work of blasting and excavating and tunneling, large quantities of powder, caps, and fuse, to wit: etc.

That the foregoing materials were furnished in such quantities and at such times as the said *Joseph Johndrew* required, and the plaintiff prepaid the freight thereon, which amounted to the sum of \$418.62; that the aggregate value, including freight of said materials, at the rates and discount provided for in said contracts, was the sum of \$7221.57, which sum was the fair value of said materials at said place of delivery.

The plaintiff duly performed all the conditions of said contracts on its part. That no part of said sum has been paid, and no part of the freight has been repaid, but the whole of said sum of \$7221.57 is unpaid, and there are no credits or off-sets thereto. That *Joseph Johndrew*, although often requested, never did deposit with the plaintiff, or its agent at *San Diego*, or at all, any bonds whatsoever of said *San Diego Flume Company*, and all said sums of money are due and unpaid.

XI. On the fifth day of September, 1887, the plaintiff filed for record with the *County Recorder* of the said *County of San Diego* its claim and notice of lien in writing, containing a true statement of its demand hereinbefore set forth for said materials, after deducting all just credits and off-sets; also setting forth in said lien the name of said *San Diego Flume Company* as the owner of the property hereinbefore described, and the name of said *Joseph Johndrew* as the person to whom said materials were fur-



nished and by whom plaintiff was employed for that purpose; also setting forth in said lien the terms, time given, and conditions of plaintiff's contract with said *Joseph Johndrew*, which, as therein set forth, were the same as those hereinbefore set forth; also setting forth in said lien a description of the property to be charged with the lien sufficient for identification, which description therein set forth was the same as that hereinbefore set forth, and which said claim was verified by the oath of *L. B. Chapman*, the secretary of the plaintiff corporation, in writing, attached to said lien and filed therewith, which said lien and oath were recorded by said *County Recorder*, in a book kept by him for that purpose, to wit: in *Book No. 2 of Mechanics' Liens*, page 218, et seq., and a copy of which lien (together with the exhibits therein referred to) is hereto annexed and marked "*Exhibit A*," and made a part of this complaint.

XII. That the whole of the property hereinbefore described, including the said diverting dam, culverts, flumes, ditches, tunnels, approaches, reservoirs, and rights of way for said *fifty miles*, is required for the convenient use and occupation of said construction and structure.

XIII. Plaintiff alleges, upon its information and belief, that the defendants, *John Doe*, *Richard Roe*, and *Samuel Black*, have, or claim to have, some estate, right, title, or lien upon said property; but plaintiff alleges that such estate, right, title, and lien are subsequent, and subject to the lien of this plaintiff thereon.

XIV. Plaintiff alleges, upon its information and belief, that \$1000 would be a reasonable fee to be allowed to its attorney in this Court, and a like sum on appeal to the *Supreme Court*, in case of appeal.

Plaintiff paid *eight dollars and fifty cents* for recording and *fifty cents* for verifying said lien, no part of which has been repaid.

Wherefore, plaintiff prays judgment against the defendants, the *San Diego Flume Company* and *Joseph Johndrew*, for said sum of \$7221.57, together with interest thereon from *August 10, 1887*, and costs of suit, including a reasonable counsel fee and the amount paid for verifying and recording said lien.

That said judgment for said amount of said costs declares and adjudges the same to be a lien upon all of said property in the complaint described, and that said lien be foreclosed. That the *Sheriff of said San Diego County* be directed to sell said property, as required by the law and practice of the Court, and out of the proceeds, after paying his costs, commission, and expenses of sale, to pay to plaintiff or its attorney the amount of its judgment aforesaid; that by said judgment it be provided that any of the parties to this suit, or their agents, may bid at said sale and become purchasers thereat; that upon production of the Sheriff's deed the purchaser be let into possession of the property purchased; that the estate, right, title, and lien of all and

each of the defendants, and all persons claiming or to claim under them, or either of them, in said property, or any part thereof, be barred or foreclosed.

That plaintiff have such other and further relief as may seem proper, together with costs of suit.

(Verified by Secretary.)

J. F. COWDERY,  
Attorney for Plaintiff.

**No. 743.—Complaint—Mechanic's Lien—Short Form.**

[TITLE OF COURT AND CAUSE.]

Now come the plaintiffs above named, and, complaining of the above named defendant, allege:

First. That heretofore, to wit: on the *first* day of *January*, 1894, *J. R. Jesse* and *H. M. Drew*, the plaintiffs above named, were, and ever since have been, partners, doing business under the firm name of *Jesse & Drew*.

Second. That during all the time in this complaint mentioned, defendant, *G. S. Ashmead*, was the owner of all that certain land situate in the *City and County of San Francisco*, State of *California*, and bounded and described as follows, to wit:

[Description.]

Third. That on the *thirtieth* day of *November*, 1893, plaintiffs and defendant, *Ashmead*, agreed together, as follows: Said defendant was engaged in erecting a dwelling-house upon all the land above described, and, on said day, he employed plaintiffs to furnish all the stairs in said building, and plaintiffs agreed to furnish the same to be used in said building, and the said defendant agreed to pay them therefor the sum of six hundred and forty-five dollars in gold coin.

Fourth. That in pursuance of said agreement the said plaintiffs, on the same day, furnished the said stairs to be used, and they were used, in the construction of said building, according to said agreement.

Fifth. That said land was at the time of commencing work on said building owned by the said defendant, *Ashmead*.

Sixth. That plaintiffs, under the terms of their agreement with the said defendant, *Ashmead*, agreed to furnish the said stairs, and the said defendant, *Ashmead*, agreed to pay plaintiffs six hundred and forty-five dollars in gold coin, for the same, on the *thirtieth* day of *December*, 1893, but the same has not been paid, nor any part thereof, and the same was and now is so due, at the time of the filing of the lien hereinafter mentioned.

Seventh. That the said land upon which the said building is constructed, together with *twenty* feet of said land on each side, and *ten* feet at the south end of said building, is necessary for the convenient use of said building.

Eighth. That on a certain day, to wit: the *third* day of *January*, 1894, said plaintiffs duly filed and recorded with the County Recorder of the *City and County of San Francisco*,



being the county in which such property is situate, their claim, duly verified by the oath of *J. R. Jesse*, containing a statement of plaintiffs' demand, after deducting all just credits and off-sets, with the name of the owner, and also the name of the person who employed plaintiffs as aforesaid, with a statement of the terms, time given, and conditions of the contract, and also a description of the property sought to be charged with the lien sufficient for identification.

Ninth. That *David Farquharson, The California Savings and Loan Society, and S. H. Harmon*, have or claim some interest in said premises; but the same is subsequent to plaintiffs'.

Tenth. That plaintiffs have paid *ten* dollars as a necessary charge and expense in preparing and recording said lien, viz: *five* dollars for recording and *five* dollars for preparing the same.

Eleventh. That the sum of *one hundred* dollars is a reasonable sum for attorney's fee in prosecuting this suit in the Superior Court.

1. Wherefore, plaintiffs pray for judgment against *G. S. Ashmead*, for the sum of *six hundred and forty-five* dollars, and that the same be adjudged a lien against the lot of land above described.

2. That said premises, building, and appurtenances above described, to the extent of the interest of said defendant, *G. S. Ashmead*, therein, be adjudged and decreed to be sold by the Sheriff of said *city and county*, according to law and the practice of this Court, and that the proceeds of such sale be applied to the payment of the costs of these proceedings and sale, and a reasonable attorney's fee of *one hundred* dollars, and said plaintiffs' claim, amounting to said sum of *six hundred and forty-five* dollars, and also for the claim of any other lien holder, if any such there be, on said property, who shall come in and be duly made parties to this action.

3. That plaintiffs be allowed a reasonable sum for attorney's fee by said Court, and his costs, in preparing and recording said lien.

4. That plaintiffs, or any other parties to this suit, may become purchasers at such sale.

5. That said plaintiffs may have such other and further order and relief in the premises as the case may require and as to the Court may seem just.

#### No. 744.—Complaint—Chattel Mortgage.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains and alleges:

I. That on the *first* day of *January, 1894*, at the City of *Oakland*, County of *Alameda*, the said defendant made and executed his certain promissory note in writing, in the words and figures following, to wit: [*here copy note*], whereby he promised to pay



plaintiff the sum of *two thousand* dollars, with interest at the time and in the manner therein specified, in gold coin of the United States, and then and there delivered the said note to the said plaintiff.

II. That at the time and place aforesaid, in order to secure the payment of said promissory note, the said defendant executed and delivered to the plaintiff his certain instrument in writing, under seal, known as a chattel mortgage, a copy of which is hereto annexed as a part of this complaint, marked "*Exhibit A*," which said chattel mortgage was made in good faith, for the purpose aforesaid, without intent to defraud creditors or purchasers, and was verified, acknowledged, and recorded, pursuant to the statute in such case made and provided.

III. That the property mentioned and described in said chattel mortgage and the schedule annexed, consisted of [*here describe property and where situated*].

IV. That no proceedings have been had at law, or otherwise, for the recovery of said sum and interest, or any part thereof, and the same is still wholly owing and unpaid,—

Wherefore, the plaintiff prays judgment:

1. That the defendant be foreclosed of all interest, lien, and equity of redemption in said mortgaged property, to wit: the said goods and chattels.

2. That the same be sold, and that the proceeds thereof be applied to the payment of the costs and expenses of this action and of counsel fees, not to exceed the sum of \$250, and of the amount due on said note and mortgage, with interest thereon up to the time of payment, at the rate of *seven* per cent. per month.

3. That the said defendant be adjudged to pay any deficiency that may remain after applying all said money as aforesaid, and for such other and further relief as to this Court may seem just in the premises.

### No. 745.—Complaint—Mortgage of Land.

[TITLE OF COURT AND CAUSE.]

*The Hibernia Savings and Loan Society*, the plaintiff in the above entitled action, complaining of *Andrew Levine, Mary Levine, his wife, and John T. Jones*, the defendants in said action, alleges:

That said plaintiff is now, and for six years and upwards last past has been, a corporation duly created and existing under and by virtue of the laws of the State of California.

That on a certain day, to wit: the *tenth* day of *March*, 1890, at the City and County of *San Francisco*, in the State of *California*, the said defendant, *Andrew Levine*, made his certain promissory note in writing, bearing date on that day, in the words and figures following, to wit: [*insert copy of note*], and then and there delivered the same to said plaintiff.

That the said defendants, *Andrew Levine and Mary Levine, his wife*, to secure the payment of the said principal sum and the

interest thereon, as mentioned in said promissory note, according to the tenor thereof, did, at the same time and place, execute under their hands and seals, and deliver to the said *plaintiff*, a certain mortgage, bearing date on the said *tenth* of *March*, 1890, and conditioned for the payment of the said sum of *five thousand* (5000) dollars, *gold coin* of the United States, and interest thereon at the rate, and at the time, and in the manner specified in said mortgage and the said promissory note, and according to the conditions thereof; which said mortgage was duly acknowledged and certified, so as to entitle it to be recorded; and the same was afterwards, to wit: on the *eleventh* day of *March*, 1890, duly recorded in the office of the County Recorder of the *City and County of San Francisco*, in Liber 416 of Mortgages, page 274; a copy of which said mortgage, with the indorsements thereon, is hereunto annexed, marked "Exhibit A," and made a part of this complaint.

That *ten months* of the interest on said principal sum mentioned in said promissory note and in the said mortgage has been paid, and is indorsed on said promissory note; and \$5000, United States gold coin, the principal sum mentioned in said promissory note and mortgage, together with interest thereon at the rate of *ten* per cent. per annum from the *tenth* day of *January*, 1891, still remains due and unpaid from said defendants, *Andrew Levine and Mary Levine, his wife*, to said *plaintiff*.

That the *plaintiff* is now the lawful owner and holder of said promissory note and said mortgage.

That the defendant, *John T. Jones*, has, or claims to have, some interest in or claim upon said premises, or some part thereof, as purchaser, mortgagee, judgment creditor, or otherwise, which interest or claim is subsequent to and subject to the lien of the *plaintiff's* mortgage.

That said *plaintiff* has paid the sum of \$175 taxes imposed on said mortgaged premises in said mortgage particularly described for the fiscal year 1890-91, which were a prior charge on said land to this mortgage, and that said sum of \$175, so paid as aforesaid, according to the covenants and stipulations in said mortgage, bear interest at the rate of two per cent. per month.

Wherefore, the *plaintiff* prays judgment against the said defendant, *Andrew Levine*, for the sum of \$5175, United States gold coin, with interest at the rate of *ten* (10) per cent. per annum from the *tenth* day of *January*, 1890, on \$5000 thereof, and at the rate of two per cent. per month on \$175 thereof, from the *tenth* day of *December*, 1884, and five per cent. on the amount found due for attorney's fee provided in said mortgage, and costs of suit; that the usual decree may be made for the sale of said premises, or so much as may be necessary to pay the same, with costs, by the Sheriff of said city and county, [or by a Commissioner appointed by the Court; or, as stipulated], according to law and the practice of this Court; that the proceeds of said sale may be applied in payment of the amount due to the *plaintiff*, and that said defendants, and



all persons claiming under them, or either of them, subsequent to the execution of said mortgage upon said premises, either as purchasers, incumbrancers, or otherwise, may be barred and foreclosed of all right, claim, or equity of redemption in the said premises, and every part thereof, and that the said *plaintiff* may have judgment and execution against the said *defendant*, *Andrew Levine*, for any deficiency which may remain after applying all the proceeds of the sale of said premises properly applicable to the satisfaction of said judgment. That the *plaintiff*, or any other parties to the suit, may become *purchaser* at said sale; that the Sheriff [or Commissioner] execute a deed to the *purchaser*; that the said *purchaser* be let into the possession of the premises on production of the Sheriff's [or Commissioner's] deed therefor; and that he may have such further relief in the premises as to this Court may seem meet and agreeable to equity.

### No. 746.—Complaint to Quiet Title.

[TITLE OF COURT AND CAUSE.]

*John Doe*, the *plaintiff* in this action, complains of the above named *defendants*, and for cause of action alleges:

That the *plaintiff*, above named, is now, and for a long time hitherto has been, the owner, and in the possession of that certain piece or parcel of land situate, lying, and being in said County of *San Mateo*, and bounded and described, as follows, to wit:

[Description.]

And *plaintiff* further avers that the said *defendants* claim and assert an interest [or interests] therein adverse to the *plaintiff*, and that the claims of said *defendants* are without any right whatever, and that the said *defendants* have not, nor have either of them, any estate, right, title, or interest whatever, in said land or premises, or any part thereof.

Wherefore, *plaintiff* prays that said *defendants* may be required to set forth the nature of their several claims, and that all adverse claims of the said *defendants*, or either of them, may be determined by a decree of this Court; and that by said decree it be declared and adjudged that said *plaintiff* is the owner of said premises, and that the *defendants*, or either of them, have no estate or interest whatever in or to said land and premises; and also that the said *defendants*, and each and every of them, be forever debarred from asserting any claim whatever in or to said land and premises adverse to the *plaintiff*, and for such other and further relief as to equity shall seem meet.

And the *plaintiff* will ever pray, etc.

### No. 747.—Complaint—Holding Over.

[TITLE OF COURT AND CAUSE.]

*John Doe*, the *plaintiff* in the above entitled action, complaining of *Richard Roe*, the *defendant* in said action, alleges:



1. That on or about the *first day of December, 1890*, the said plaintiff, by a verbal agreement and lease, made on or about the said day, at the *City and County of San Francisco*, leased, demised, and let to the said defendant, *Richard Roe*, of the said *City and County of San Francisco*, the premises situate, lying, and being in the *City and County of San Francisco*, State of *California*, and described as follows, to wit:

[Here describe premises.]

To have and to hold the said premises to the *defendant for one month, and from month to month thereafter*, at the monthly rent of *fifty-six dollars and fifty cents*, payable monthly on the *first day* of each and every month thereafter, in advance, in lawful money of the United States.

2. That by virtue of said agreement and lease, so made, as aforesaid, the defendant, *Robert Roe*, went into the possession and occupation of said demised premises, and still continues to hold and occupy the same as tenant of said plaintiff, as aforesaid.

3. That pursuant to the terms of said agreement and lease, there became and was due on the *first day of January, 1890*, from said defendant to said plaintiff, for the rent of said premises, for one month in advance, to wit: from the *first day of January, 1890*, to the *first day of February, 1890*, the sum of *fifty-six dollars and fifty cents*, lawful money of the United States, amounting to the sum of *\$56.50*. [Here insert amount of rent unpaid for previous months].

4. That on a certain day, to wit: the *sixth day of January, 1890*, at said *City and County of San Francisco*, demand in writing for the amount due, to wit: *\$56.50*, was duly made by said plaintiff of said defendant, for and requiring the payment of said rent then due, amounting to the said sum of *fifty-six dollars and fifty cents*, or the possession of said demised property, but said defendant neglected and refused for the space of *three whole days and upwards*, after demand so made, as aforesaid, and still neglects and refuses, to pay said rent or surrender possession of said premises.

5. That said defendant, *Richard Roe*, unlawfully holds over and continues in the possession of said premises after default in the payment of said rent, pursuant to the lease and agreement under which said property is held, and without the permission of the plaintiff; by reason whereof the plaintiff has already sustained damages in the sum of *twenty-eight dollars and twenty-five cents*, lawful money of the United States, for the rent of said premises actually accrued from the *first day of January, 1890*, to the time of the commencement of this suit.

Wherefore, said plaintiff prays judgment against said defendant for the restitution and possession of said premises, and for the sum of *twenty-eight dollars and twenty-five cents*, the amount now due and unpaid for the rent thereof, and such further sum as may accrue from the time of filing this complaint to the ren-

dition of judgment herein, and that the amount found due for rent may be trebled and made payable in the lawful money of the United States, and also for the costs of this suit, *and that by said judgment it be declared that said lease (or agreement) under which said defendant holds be forfeited, and that writ of possession issue forthwith.*

**No. 748.—Complaint—Holding Over—Expiration of Term.**

[TITLE OF COURT AND CAUSE.]

*John Doe*, the plaintiff in the above entitled action, complaining of *Richard Roe*, the defendant in said action, alleges:

1. That on or about the *first day of December, 1890*, the said plaintiff, by a written lease made on or about the said day, at the said County of *San Mateo*, leased, demised, and let to the said defendant, *Richard Roe*, of the said County of *San Mateo*, the premises situate, lying, and being in the said County of *San Mateo*, State of *California*, and described as follows, to wit:

[Insert description.]

To have and to hold the said premises to the defendant, for the term of one year from the *first day of December, 1890*, at the yearly rent of *six hundred (600) dollars*, payable in equal monthly installments in advance. That by virtue of said lease, said defendant, *Richard Roe*, went into possession of said premises, and still continues to hold and occupy the same.

2. That the term for which said premises were demised, as aforesaid, has terminated, and that the said defendant holds over and continues in possession of the said demised premises, without the permission of the said plaintiff and contrary to the terms of said lease.

3. That the said plaintiff, since the expiration of the term for which said premises were demised, as aforesaid, to wit: on the *fourth day of December, 1890*, made demand, in writing, of the said defendant to deliver up and surrender to him the possession of said premises.

That more than *three* days have elapsed since the making of such demand, and the defendant has refused and neglected, for the space of *three* days after such demand, to quit the possession of said demised premises, and still does refuse.

That the monthly value of the rents and profits of the said premises is the sum of *fifty (50) dollars, gold coin of the United States*.

Wherefore, the said plaintiff prays judgment for the restitution of the said premises, and for damages for the rents and profits of said premises, and that such damages may be trebled as damages for the occupation and unlawful detention and holding over of the same, amounting to the sum of *fifty* dollars per month, besides costs of suit.



**No. 749.—Complaint—Claim and Delivery.**

[TITLE OF COURT AND CAUSE.]

*Wm. J. Heney*, the *plaintiff* in the the above entitled action, complaining of *George Turner*, the *defendant* in the said action, alleges:

That on the *fourth* day of *June*, 1894, at the County of *Sacramento*, said *plaintiff* was, and now is, the owner and entitled to the possession of the following described personal property to wit:

[Description.]

That said personal property is of the value of *one thousand* dollars.

That said *defendant* on the *fourth* day of *June*, 1890, at the *City and County of San Francisco*, without the *plaintiff's* consent, and wrongfully, came into the possession of said personal property, and still retains possession of the same, and he claims to be the owner of the same.

That before the commencement of this action, to wit: on the *fourth* day of *June*, 1890, at the place last aforesaid, the *plaintiff* demanded of the *defendant* the possession of said personal property, but to deliver the possession thereof the *defendant* refused, and still refuses.

That the *defendant* still unlawfully withholds and detains said property from the possession of the *plaintiff*, to his damage in the sum of *one thousand* dollars.

That the same has not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under an execution or an attachment against the property of the *plaintiff* [or if it has been so seized or attached, allege the fact and aver that the said property is by law exempt from execution].

Wherefore, the *plaintiff* demands judgment against the *defendant* for the recovery of the possession of said personal property, or for the sum of *one thousand* dollars, the value thereof, in case a delivery can not be had, together with *five hundred* dollars damages, and for costs of suit.

**No. 750.—Complaint—Ejectment.**

[TITLE OF COURT AND CAUSE.]

The *plaintiff* above named, complaining of *defendant* above named, for cause of action, alleges:

That on the *fourth* day of *March*, 1890, the said *plaintiff* was the owner and seized in fee, and entitled to the possession of all that certain lot of land situate in the *City and County of San Francisco*, State of *California*, and described as follows, to wit:

[Description.]

That while the *plaintiff* was such owner, and so seized and possessed, and entitled to the possession of said land and



premises, the said *defendant* did, on the day and year aforesaid, wrongfully and unlawfully enter into and upon the same, and oust and eject the *plaintiff* therefrom, and ever since that day, wrongfully and unlawfully *withheld*, and still and now wrongfully and unlawfully does withhold, the possession thereof from the *plaintiff*, to his *wrong, injury, and damage* in the sum of *two hundred dollars*.

That the value of the rents and profits of the said land and premises is *two hundred and fifty dollars per month*, and that by reason of the unlawful withholding of the said land by the *defendant*, as aforesaid, *plaintiff* has been deprived of said rents since the *first day of January, 1890*, and, by the continuance thereof will be deprived of the use and occupation of the same, to his loss and damage in the sum of *seven hundred and fifty dollars*.

Wherefore, the *plaintiff* prays judgment against the said *defendant* for the restitution of said land and premises, and for the sum of *five hundred dollars* damages for the withholding thereof, and *two hundred and fifty dollars* damages caused by the loss of the value of the rents and profits thereof, together with his costs of suit.

J. C. BATES,  
Attorney for Plaintiff.

#### No. 751.—Complaint—Ejectment—Prior Possession.

[TITLE OF COURT AND CAUSE.]

*John Doe*, the *plaintiff* in the above entitled action, complaining of *Richard Roe*, the *defendant* in said action, alleges:

That he was, on the *first day of June, 1890*, and for *two years and upwards next prior thereto* had been, lawfully possessed, and is now entitled to the possession, of that certain piece of land, situate in the *City and County of San Francisco*, State of *California*, described as follows:

[Description.]

That the *plaintiff* being so possessed, the *defendant* afterwards, on the *second day of June, 1890*, unlawfully entered into the possession of the demanded premises, and ousted the *plaintiff*, and now unlawfully withholds the possession thereof from the *plaintiff*, to his damage in the sum of *one hundred dollars*.

That the value of the rents, issues, and profits of the said premises from the said *second day of June, 1890*, and while the *plaintiff* has been excluded therefrom by the *defendant*, is *five hundred dollars*.

Wherefore, the *plaintiff* prays judgment against the *defendant* for the restitution of the possession of the demanded premises, and for the sum of *one hundred dollars*, for the withholding thereof, together with the sum of *five hundred dollars*, the value of the said rents, issues, and profits, and costs of suit.

**No. 752.—Complaint—Where Plaintiff a Devisee.**

[TITLE OF COURT AND CAUSE.]

The plaintiff, as devisee of *A. B.*, deceased, complains, and alleges:

1. [*State cause of action accrued to deceased.*]
2. That the said *A. B.* was seized of the estate hereinbefore mentioned, and that he died on the *second* day of *July*, 1894, at *S.*, and by his last will devised the same to this plaintiff.  
[*Demand of judgment.*]

**No. 753.—Complaint—Assignee for Creditors.**

[TITLE OF COURT AND CAUSE.]

The plaintiff, as assignee for the benefit of the creditors of *A. B.*, complains of the defendant, and alleges:

1. [*State a cause of action accrued to the assignor.*]
2. That on the *ninth* day of *August*, 1894, at *S. F.*, the said *A. B.* assigned all his property, including the said claim, to the plaintiff [*in trust for the purpose of paying all his debts*].  
[*Demand of judgment.*]

**No. 754.—Complaint—Foreign Corporation.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That it is a corporation organized and existing under the laws of the State of *Nevada*, and is doing business as such in its said corporate name.

**No. 755.—Complaint—Corporation Organized under a Special Law.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That the defendant is a corporation created by and under the laws of this State, organized pursuant to an Act of the Legislature, entitled [*title of Act in full*], passed *January 10*, 1894, and the Acts amendatory thereof and supplementary thereto.
2. [*State a cause of action.*]  
[*Demand of judgment.*]

**No. 756.—Complaint—Corporation on Stock Assessment.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains and alleges:

1. That in pursuance of an Act of the Legislature of the State of California, entitled [*give the title of the Act*], passed *October 9*, 1894, and of the Acts amendatory thereof and supplementary thereto, the above named company was organized and formed into a corporation under the name of the *A. L. Company*, and ever since its said

organization has had its principal office and place of business at the *City of B.*

2. That on the *fourth* day of *November, 1894*, at *B.*, defendant and certain other persons, being desirous of associating themselves together for the purpose of constructing a toll road [*or state the actual purpose*] from the village of *R.* to the village of *S.*, in said county, in consideration thereof and of the mutual promises each to the other, and of the benefits to be derived from being members of said association, made and subscribed a certain agreement in writing, as follows, to wit:

[*Copy subscription paper, with subscribers' names, and add.:*] and other persons whose names are here omitted.

3. That the said defendant did, at the time of subscribing said agreement, set opposite to his name thereto subscribed the number of five shares, and that the par value of each share is \$50, and that said defendant agreed to take and pay for the same.

4. That afterwards, to wit: on the *fifth* day of *December, 1894*, at a regular meeting of the trustees of said company, an assessment of five per cent. of the par value of each share of the capital stock of said corporation was duly levied; that at the time of the levy of such assessment, defendant was a subscriber to the capital stock of said corporation in the amount of 1000 shares, of the par value of \$50, and was the owner of such stock.

5. That afterwards, etc. [*Allege the number of assessments defendant has failed to pay, each as above.*]

6. That the defendant had due notice of each of the said assessments, made by the trustees of said company as aforesaid, and that the same were duly published in the *Daily Report*, a newspaper printed and published in the *City of B.*, for at least ten days, and in every respect according to law.

7. That the whole sum of \$250 is now due plaintiff from defendant thereon, and no part thereof has been paid.

[*Demand of judgment.*]

### No. 757.—Complaint—Corporation, on Subscription.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. [*Aver incorporation.*]

2. That in contemplation of the incorporation of these plaintiffs, and for the purpose of constructing, owning, and maintaining the toll road, then contemplated, the defendant, with others, on the *tenth* day of *January, 1894*, at *A.*, became a subscriber to the stock of the said company by severally signing and delivering an agreement in writing, of which the following is a copy: [*Copy subscription paper*].

3. That, among other persons, the defendant signed and executed said agreement, and set opposite to his name the sum of \$100, which he thereby agreed to pay to said company.



4. That after the defendant had thus subscribed, and on or about the *sixth* day of *February, 1894*, he subscribed to the articles of association of said company, his name and his place of residence, to wit: *A. B. of C. F.*, and the number of shares of stock taken by him, to wit: *two* shares, amounting to \$100, the shares of stock being \$50 each.

5. That the plaintiff, by its directors, on the *fourth* day of *March, 1894*, at *L. K.*, tendered to defendant the shares of stock so subscribed for by him, and demanded the defendant to pay thereon the sum of \$100, agreeably to said subscription and the charter and by-laws of the company.

6. That the plaintiff has performed all the conditions thereof on its part.

7. That the defendant has not paid the said subscription, or any part thereof.

[*Demand of judgment.*]

#### No. 758.—Complaint—Subscription—Public Object.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. [*Aver incorporation.*]

2. That the plaintiff, in the month of *March, 1894*, was erecting a building at *B.*, for the purposes of *public worship*.

3. That the defendant and others requested the plaintiff to complete the same, and for the purpose of enabling the plaintiff to do so, they subscribed and agreed to pay to the plaintiff the sum of \$50, in consideration of the premises, and of the like subscription and agreement of other persons.

4. That upon the faith of said subscription the plaintiff proceeded with the erection of the building, and expended thereon large sums of money, and incurred large liabilities, and completed said building, and otherwise duly performed all the conditions on its part.

5. That the defendant has not paid said subscription, or any part thereof [*except, etc.*].

[*Demand of judgment.*]

#### No. 759.—Complaint—Loss Payable to Mortgagee.

[TITLE OF COURT AND CAUSE.]

[*Allege as in the form "On Fire Policy by Insured," substituting the original insured's name for the word "plaintiff," down to 5.*]

5. That on the *fifteenth* day of *January, 1894*, the said insured made, executed, and delivered to plaintiff his mortgage on said premises, to secure the sum of \$200, and assigned said policy to said plaintiff, as further security, and thereupon defendant, at the request of plaintiff and of the insured, indorsed on said policy, "Loss, if any, payable to plaintiff."

6. That said mortgage and the debt secured thereby is wholly unpaid and unsatisfied.

[*Continue as in preceding form.*]

[*Demand of judgment.*]

**No. 760.—Complaint—Against a County for Temporarily Guarding Jail.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains and alleges:

1. [*Allege defendant's corporate existence.*]

2. That the plaintiff performed services for the said defendant in guarding the jail of said county, from the *second* day of *January*, 1894, to and including the *seventh* day of *July*, 1894.

3. That the Sheriff, with the assent, in writing, of the Superior Judge of said county, employed plaintiff to perform said service as a temporary guard for the protection of the County Jail, and for the safe keeping of prisoners, and that said employment was necessary.

4. That said Sheriff, at the time of employing said plaintiff, promised plaintiff that the defendant would pay plaintiff for said services what they were reasonably worth, and that said services were reasonably worth the sum of \$200.

5. [*Allege presentation, rejection, and non-payment of claim as in preceding form.*]

6. [*If there are other claims for similar services, performed at different dates, allege them as separate causes of action.*]

[*Demand of judgment.*]

**No. 761.—Complaint—Creditor v. Individual Stockholder.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That at the times hereinafter mentioned, the *B. C. Company* was a corporation created by and under the laws of this State, organized pursuant to an Act entitled [*title of Act*] passed *December 17*, 1894, and the Acts amending the same, and supplementary thereto.

2. That on the *fourth* day of *April*, 1893, said company, by its agent duly authorized thereto, made its promissory note, dated on that day, a copy of which is hereto annexed, and marked "*Exhibit A.*"

3. That on the *sixteenth* day of *December*, 1894, in an action in the Court of *A. L. Davis, Esq.*, Justice of the Peace of *Clear Water Township, County of Yuba*, to recover the same from said company, judgment was rendered by said Court against said company in favor of the plaintiff for \$200, being \$200, the amount due thereon, with interest amounting to \$25 and costs.

4. That execution thereon was thereafter issued against said company, and returned wholly unsatisfied.

5. That at the time said debt was contracted, the defendant was a stockholder of said company, holding stock therein to the amount of \$1000, being 10 shares of the par value of \$100 each; and that he is still such stockholder therein.

[*Demand of judgment.*]

[*"Exhibit A" annexed.*]

### No. 762.—Complaint—By an Executor.

[TITLE OF COURT AND CAUSE.]

The plaintiff, as such executor, complains, and alleges:

1. [*State cause of action.*]

2. That the said *C. D.* in his lifetime made and published his last will, whereby he appointed the plaintiff executor thereof.

3. That on the *fifth* day of *January, 1894*, at *K. L.*, the said *C. D.* died.

4. That on the *twelfth* day of *January, 1895*, at *K. L.*, said will was proved and admitted to probate, in the Superior Court in the County of *Tulare*, in this State.

5. That thereupon, on the *fifteenth* day of *January, 1896*, letters testamentary were issued on the said will to the plaintiff, by the Superior Court of said county.

6. That thereupon the plaintiff duly qualified and entered upon the discharge of his duties as executor, and that said letters testamentary have not been revoked.

[*Demand of judgment.*]

### No. 763.—Complaint—By an Administrator.

[TITLE OF COURT AND CAUSE.]

The plaintiff, as such administrator, complains, and alleges:

1. [*State cause of action accruing to the intestate.*]

2. That on the *twenty-first* day of *February, 1894*, at *N.*, the said *A. B.* died intestate.

3. That on the *twenty-fifth* day of *February, 1894*, letters of administration upon the estate of the said *A. B.* were issued by the Superior Court of the County of *Fresno*, in this State, to the plaintiff.

4. That the plaintiff thereupon duly qualified as such administrator, and entered upon the discharge of the duties of his said office, and that said letters of administration have not been revoked.

[*Demand of judgment.*]

### No. 764.—Complaint—Against Administrator or Executor.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. [*State a cause of action against the decedent.*]

2. [*Allege death of decedent, and defendant's appointment as administrator or executor, as in preceding forms.*]



3. That said defendant, as such executor [or administrator], in pursuance of an order of the Superior Court of *San Diego* County, caused a notice to the creditors of said deceased to be published in the *News*, the same being the newspaper designated by said Court, requiring all persons having claims against said deceased to exhibit them, with the necessary vouchers, to the said executor [or administrator] at [*specify the place*], the same being specified therein as his place of business, within ten months after the first publication of said notice; that said notice was first published on the *eighth* day of *June*, 1894.

4. That on the *twenty-seventh* day of *May*, 1894, at *M.*, the claim hereinbefore set forth, verified by the oath of the claimant, and upon which this action is founded, was duly presented in writing by the plaintiff to the defendant, as such administrator [or executor], for allowance. And that the same was by him, as such administrator [or executor], rejected on the *thirty-first* day of *May*, 1894; that a copy of said claim as presented is hereunto attached and made a part of this complaint.

[*Demand of judgment.*]

#### **No. 765.—Complaint—Against Husband and Wife for Goods Sold to the Wife.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains of the defendants, and alleges:

1. That between the *tenth* day of *February*, 1894, and the *fifteenth* day of *June*, 1894, at *A.*, the plaintiff sold and delivered to the defendant, *A. B.*, who then was, and still is, the wife of *C. B.*, at her request, materials used for the building of a house for her, upon and for the benefit of her separate lands and property.

2. That said materials were of the agreed price and value [or were reasonably worth the sum] of \$2500, and that no part thereof has been paid.

Wherefore, the plaintiff demands judgment against the defendants for the said sum of \$2500, and interest thereon from the *tenth* day of *February*, 1894, and costs of suit.

#### **No. 766.—Complaint—Against Husband and Wife on Note by Wife while Sole.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains of the said *C. D.* and *E.*, his wife, the defendants, for that the said *E.*, heretofore, whilst she was sole and unmarried, on the *sixth* day of *July*, 1894, at [*place of date*], made her certain promissory note in writing of that date, and then and there delivered the same to the said plaintiff, and thereby promised, by her then name of *E. F.*, to pay to the said plaintiff, or order, the sum of \$100 in gold coin, after the date thereof; and the said *E. F.* has since intermarried with the said *C. D.*; yet the said defendants have not, nor hath either of them,

paid the said sum of money, or any part thereof, to the said plaintiff.

Wherefore, the said plaintiff prays judgment against the said defendants for the said sum of \$1000, together with interest thereon from the *sixth* day of *July*, 1894, and costs of suit.

**No. 767.—Complaint—Against a Married Woman, as Sole Trader.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That the defendant is the wife of one *A. B.*
2. That on the *nineteenth* day of *October*, 1894, by a decree of the Superior Court of the County of *Solano*, in this State, the defendant was decreed a sole trader; and at the time of making the note hereafter mentioned, the defendant was, and still is, a sole trader, carrying on business as a milliner, at *A.*
3. That on the *tenth* day of *November*, 1894, at *A.*, the plaintiff sold and delivered to the defendant, at her request, goods of the value of \$30, which were used by the defendant in her said business, as sole trader.

4. That in consideration thereof, the defendant, as sole trader, made her promissory note, of which the following is a copy: [*Copy note*].

5. That she has not paid the same.

[*Demand of judgment.*]

**No. 768.—Complaint—By an Infant—General Guardian.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That he is under the age of *twenty-one* years.
2. That on the *twenty-seventh* day of *April*, 1894, at *C.*, the above named *C. D.* was duly appointed by the Superior Court of *Yuba* County, State of *California*, guardian of the property and person of the plaintiff.

3. [*State the cause of action.*]

[*Demand of judgment.*]

**No. 769.—Complaint—Infant—By Guardian ad Litem.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That he is under the age of *twenty-one* years, to wit: of the age of *nineteen* years.

2. That on the *second* day of *May*, 1894, at *C.*, the above named *C. D.* was duly appointed by the Superior Court of the County of *Sonoma*, State of *California*, the guardian of the above named *A. B.*, for the purposes of this action.

3. [*State the cause of action.*]

[*Demand of judgment.*]

**No. 770.—Complaint—By Guardian of Insane Person.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. [*State the cause of action.*]
2. That on the *twenty-first* day of *June, 1894*, at the County of *Napa*, State of *California*, the Superior Judge of said county, upon the petition of *L. M.*, and after due notice and hearing, adjudged the said *C. D.* to be an insane person [*or incapable of taking care of himself and managing his property.*]
3. That afterwards, on the *same* day of *June, 1894*, at said county, said Superior Judge appointed the plaintiff guardian of the person and estate of the said *C. D.*; that he, this plaintiff, has given bond as required by law, and still and now is guardian of the said *C. D.*, as aforesaid.

[*Demand of judgment.*]**No. 771.—Complaint—Against Guardian of Insane Person.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. [*State a cause of action against an insane person.*]
2. That afterwards [*or on the second day of July, 1894,*] the said *E. F.* was adjudged by the Superior Court to be a person of unsound mind.
3. That the defendant was, on the *eighth* day of *July, 1894*, appointed by the said Court guardian of the person and estate of the said *E. F.*; that he, the defendant, accepted said appointment, and is now such guardian.

Wherefore, the plaintiff demands judgment for \$750, with interest from *June 22, 1894*, to be paid out of the estate of the said *E. F.*, in the hands of the defendant.

**No. 772.—Complaint—Against Partners.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains of the defendants, and alleges:

1. That at the time hereafter mentioned, the defendants were copartners, and doing business as merchants, or traders [*or otherwise*], at the City of *F.*, under the firm name of *A. B. & Co.*
2. [*State cause of action.*]

[*Demand of judgment.*]**No. 773.—Complaint—By a Surviving Partner.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That at the time hereinafter mentioned, the plaintiff and one *C. D.* were partners, doing business as merchants, or traders [*or otherwise*], at the City of *K.*, under the firm name of *John Doe & Co.*



2. [Statement of cause of action.]
3. That on the *twenty-first* day of *August*, 1894, at *K.*, said *C. D.* died, leaving the plaintiff the sole survivor of the said firm.  
[Demand of judgment.]

#### No. 774.—Complaint—By Sheriff—Aid of Attachment.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That he is the Sheriff of the County of *Napa*, duly elected, qualified, and acting as such.
2. That on the *nineteenth* day of *March*, 1894, a writ of attachment was issued out of this Court, and to him directed and delivered, as such Sheriff, in an action against *A. B.*, whereby he was directed to attach and keep all the property of said *A. B.* in his county.
3. That the defendant then had in his possession \$500 belonging to *A. B.* [or was indebted to the said *A. B.* in the sum of \$500].
4. That on the *twenty-first* day of *March*, 1894, the plaintiff made due service of said writ by delivering to and leaving with said defendant a copy thereof, with a notice showing the property levied on; whereupon the plaintiff became entitled to receive from the defendant, and he became answerable to the plaintiff for said \$500, which the defendant refuses to pay over to the plaintiff, or to account to him therefor, to his damage in \$500.  
[Demand of judgment.]

#### No. 775.—Complaint—Against Sheriff for Not Executing Process.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That at the time of issuing the execution hereinafter mentioned, the defendant was the Sheriff of the County of *Sacramento*, in this State.
2. That on the *twenty-seventh* day of *September*, 1894, at *K.*, judgment was duly given and made in an action in the Superior Court, in favor of the plaintiff, against one *E. F.*, for \$500.
3. That on the *tenth* day of *October*, 1894, an execution against the property of the said *E. F.* was issued upon the said judgment, and directed and then delivered to the defendant as Sheriff aforesaid.
4. That on that day the said *E. F.* had a large quantity of general merchandise in his store, *No. 127 First street, Sacramento*, and owned the said store and lot [or, as the case may be], in the said county, out of which the said execution might have been satisfied, of which the defendant had notice.
5. That he refused and neglected to make a levy under or by virtue of said execution, upon said property, or any part thereof

[or as the case may be; and if he levies a part, specify it], as by said execution he was required to do, to the damage of the plaintiff of \$2000.

[Demand of judgment.]

**No. 776.—Complaint—Against Sheriff for Neglecting to Return Execution.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That at the time of the issuing of the execution hereinafter mentioned, the defendant was the Sheriff of the County of *Marin*, in this State.

2. That on the *eighth* day of *October*, 1894, in an action in the Superior Court of the County of *Marin*, in this State, wherein this plaintiff was plaintiff, and one *A. B.* was defendant, the plaintiff recovered a judgment duly given by said Court against the said *A. B.* for \$200.

3. That on the *fifteenth* day of *October*, 1894, an execution against the property of said *A. B.* was issued on said judgment, and directed and then delivered to the defendant, as Sheriff of the County of *Marin*, of which execution the following is a copy: [Copy the execution and indorsement].

4. That although more than *ten days* elapsed after delivery of said execution to the defendant, and before the commencement of this action, yet he has, in violation of his duty as such Sheriff, failed to return the same, to the damage of the plaintiff in \$500.

**No. 777.—Complaint—Against Sheriff, for Moneys Collected.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That at the time hereinafter mentioned, the defendant was the Sheriff of the County of *San Mateo*, in this State.

2. That on the *twenty-fifth* day of *November*, 1894, at *San Mateo*, an execution, then duly issued, in form and effect as required by law, against the property of one *A. B.*, and in favor of the plaintiff, upon a judgment for the sum of \$350, theretofore duly given in favor of the plaintiff against said *A. B.*, in the Superior Court of the County of *San Mateo*, in this State, was by the plaintiff directed and delivered to the defendant as such Sheriff.

3. That the defendant thereafter, as such Sheriff, collected and received upon said execution, to the use of the plaintiff, the sum of \$350, beside his lawful fees.

4. That although more than *sixty days* elapsed, after the delivery of said execution to the defendant, before this action, yet he has, in violation of his duty as Sheriff, failed to pay over to the plaintiff the amount so collected.

[Demand of judgment.]

**No. 778.—Complaint—Against Sheriff for False Return.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That at the time of issuing the execution hereinafter mentioned, the defendant was the Sheriff of the County of *Yuba*, in this State.

2. That on the *tenth* day of *December*, 1894, judgment was duly given and made in an action in the Superior Court of the County of *Yuba*, in favor of the plaintiff, against one *G. W.*, for \$1000.

3. That on the *twentieth* day of *December*, 1894, an execution against the property of the said *G. W.* was issued upon the said judgment, directed and delivered to the defendant, as Sheriff aforesaid.

4. That the defendant afterwards, and during the life thereof, levied, under the said execution, on property of the said *W.* of the value of \$1000; [or sufficient to satisfy the said judgment, with all the expenses of the execution; or state particulars of property on which he might have levied].

5. That the defendant afterwards, in violation of his duty as such Sheriff, falsely returned upon the said execution, to the Clerk of the County of *Yuba*, that the said *W.* had no property in his county on which he could levy the amount of said judgment, or any part thereof.

6. That by reason of said premises, the plaintiff has been deprived of the means of obtaining the said moneys directed to be levied as aforesaid, and which are still wholly unpaid, and is likely to lose the same.

[Demand of judgment.]

**No. 779.—Complaint—Sheriff Not Levying—Falsely Returning Nulla Bona.**

[TITLE OF COURT AND CAUSE.]

[Allege as in preceding form down to 4 and insert:]

4. That the defendant neglected to make any levy on the goods and chattels, lands, and tenements of the said *G. W.*; and falsely and fraudulently returned upon the said writ to the said Court, that the said *G. W.* had not any goods or chattels, lands, or tenements, in his county. That by reason of the premises, the plaintiff is deprived of his remedy for obtaining payment of his judgment and costs aforesaid, and has wholly lost the same.

[Demand of judgment.]

**No. 780.—Complaint—For an Escape.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That at the time of issuing the execution and of the escape hereinafter mentioned, the defendant was the Sheriff of the County of *Humboldt*, in this State.



2. That on the *twenty-fifth* day of *January, 1894*, in an action in the Superior Court [*state Court*] brought by this plaintiff against one *A. B.*, for [*cause authorizing arrest*], this plaintiff recovered judgment, duly given by said Court against said *A. B.*, for \$2400.

3. That on the *fifth* day of *February, 1894*, an execution against the property of said *A. B.* was duly issued out of the said Superior Court, on said judgment, and thereafter duly returned wholly unsatisfied.

4. That thereafter, on the *tenth* day of *February, 1894*, an order of arrest was issued by the said Court against the person of said *A. B.*, and then directed and delivered to the defendant as said Sheriff, whereby he was required to arrest said *A. B.*, and commit him to the jail of the said County of *Humboldt*, until he should be discharged according to law.

5. That thereafter the defendant, as such Sheriff, arrested said *A. B.* and committed him to jail, pursuant to said execution and order of arrest.

6. That thereupon the plaintiff entered into an undertaking, with good and sufficient sureties, duly executed and approved, conditioned for the payment of the expenses of said *A. B.* for necessary food, clothing, and bedding [*or state a deposit for this purpose*].

7. That in violation of his duty as such Sheriff, he has since, to wit: on the *twenty-eighth* day of *February, 1894*, without the consent or connivance of the plaintiff, permitted said *A. B.* to escape, to the damage of the plaintiff of \$2400.

Wherefore, the plaintiff demands judgment against the defendant, according to the statute, for the debt [*or for damage, or sum of money*] for which such prisoner was committed, to wit: \$2400, with interest from, *etc.*

### No. 781.—Complaint—By a Receiver Appointed.

[TITLE OF COURT AND CAUSE.]

The plaintiff, as receiver of the property of *C. D.*, complains, and alleges:

1. [*State cause of action.*]

2. That on the *fifth* day of *March, 1894*, at the *City and County of San Francisco*, and *State of California*, in an action then pending in the said Superior Court, wherein *C. D.* was plaintiff and *E. F.* was defendant, upon an application made by the said *A. B.*, and by order duly made by said Court [*or Judge*], this plaintiff was appointed receiver of the property of the said *C. D.*, herein-after described, to wit: [*Describe property so as to show that the cause of action is embraced*].

3. That thereafter, and before the commencement of the present action, he gave his bond required by the said order, as such receiver, approved by the said Judge, which bond, with such ap-

proval, is on file in the said Court, and was so filed prior to the commencement of this action.

4. That on the *fifth* day of *March, 1894*, said receiver duly obtained leave of the said Court [*the Court appointing him*] to bring this action.

[*Demand of judgment.*]

**No. 782.—Complaint—On Express Promise—Precedent Debt.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *fifth* day of *July, 1894*, at —, the defendant was then indebted to the plaintiff in the sum of \$770 for [*state what*]. In consideration thereof, he then promised to pay to the plaintiff the said sum on the *fifth* day of *August, 1894*.

2. That he has not paid the same, nor any part thereof.

[*Demand of judgment.*]

**No. 783.—Complaint—Upon Compromise.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *eleventh* day of *September, 1894*, an action was pending in the said Superior Court, brought by the plaintiff to recover from the defendant the sum of \$500, for goods sold by plaintiff to the defendant.

2. That on the *thirtieth* day of *September, 1894*, at C., in consideration that the plaintiff would discontinue said action, and would accept \$400 in satisfaction of his claim, the defendant promised to pay the plaintiff the sum of \$400.

3. That the defendant accordingly discontinued said action.

4. That no part of said sum has been paid.

[*Demand of judgment.*]

**No. 784.—Complaint—Promise of a Third Person.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *second* day of *January, 1894*, one A. B. was, and ever since has been, indebted to the plaintiff in the sum of \$1250.

2. That on that day the said A. B. was the holder of a bill of exchange [*describe it*], and then indorsed and delivered the same to the defendant; in consideration of which the defendant then and there promised A. B. that he would endeavor to collect the same, and that when collected he would apply the proceeds in payment of said indebtedness of said A. B. to the plaintiff.

3. That afterwards, on the *third* day of *August, 1894*, the defendant collected and received the same.

4. That no part thereof has been paid to the plaintiff.

[*Demand of judgment.*]

**No. 785.—Complaint—On a Promise to Surrender Lease.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That at the time hereinafter mentioned, the plaintiff leased from the defendant a house and lot in the Town of *D.*, for a term commencing on the *second* day of *February, 1894*, and ending on the *second* day of *August, 1894*, under which he was entitled to the possession of said house and lot.

2. That on the *second* day of *May, 1894*, the defendant promised the plaintiff that in consideration that he, the plaintiff, would surrender to the defendant the unexpired term and the possession, he would pay the plaintiff the sum of *\$1500*.

3. That the plaintiff thereupon surrendered the unexpired term of said lease, and the possession of said land to the defendant.

4. That no part of said sum has been paid.

[Demand of judgment.]

**No. 786.—Complaint—On Fire Policy—By the Insured.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That the defendants are a corporation duly created by and under the laws of this State [*or the State of, etc.*], organized pursuant to an Act of the Legislature of said State, entitled [*title of the Act*], passed [*date of passage*], and the Acts amending the same.

2. That the plaintiff was the owner of, [*or had an interest in*] a dwelling-house, known as *No. 200 M street*, in the City of *P.*, at the time of its insurance and destruction [*or injury*] by fire as hereinafter mentioned.

3. That on the *twenty-second* day of *October, 1894*, at *P.*, in consideration of the payment by the plaintiff to the defendants of the premium of *\$20*, the defendants, by their agents duly authorized thereto, made their policy of insurance in writing, a copy of which is annexed hereto, and made part of this complaint.

4. That on the *twenty-ninth* day of *November, 1894*, said dwelling-house and furniture were totally destroyed [*or greatly damaged, and in part destroyed*] by fire.

5. That the plaintiff's loss thereby was *\$2000*.

6. That on the *third* day of *December, 1894*, he furnished the defendant with proof of his said loss and interest, and otherwise performed all the conditions of said policy on his part.

7. That defendant has not paid the said loss, nor any part thereof.

[Demand of judgment.]

[Annexed a copy of policy.]



**No. 787.—Complaint—The Same—Where by Purchaser.**

[TITLE OF COURT AND CAUSE.]

1. [*Allege incorporation as in last form.*]
2. That [*name of original insured*] was the owner of, or had an interest in, *etc., etc.*
3. [*The same as in last form, substituting the names of the original insured, instead of the words "the plaintiff."*]
4. That on the *fifth* day of *September, 1894*, at *O.*, the consent of the defendants, in writing, on said policy, by their said agents, the said [*original insured*] sold, assigned, and conveyed to the plaintiff, his interest in the said property and in the said policy of insurance. [*Continue as in last form.*]  
[*Demand of judgment.*]

**No. 788.—Complaint—By Executor on Life Policy.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. [*Allege incorporation as heretofore.*]
2. That on the *twenty-seventh* day of *April, 1892*, at *M.*, the defendant, in consideration of the [*annual, semi-annual, or otherwise*] payment by one *A. B.* to it of *\$1000*, made their policy of insurance, in writing, of which a copy is hereto annexed, marked "*Exhibit A*," and made part of this complaint, and thereby insured the life of said *A. B.* in the sum of *\$20,000*.
3. That on the *thirtieth* day of *June, 1894*, at *M.*, the said *A. B.* died.
4. That on the *twenty-eighth* day of *June, 1893*, at *M.*, said *A. B.* left a will, by which the plaintiff was appointed the sole executor thereof [*or this plaintiff and C. D. were appointed executors thereof*].
5. That on the *third* day of *July, 1894*, said will was duly approved and admitted to probate in the Superior [*or other*] Court of the County of *M.*, and letters testamentary thereupon were thereafter issued and granted to the plaintiff, as sole executor [*or otherwise*], by the Superior [*or other*] Court of said county; and this plaintiff thereupon duly qualified as such executor, and entered upon the discharge of the duties of his said office.
6. That on the *fifth* day of *July, 1894*, the plaintiff furnished the defendant with proof of the death of the said *A. B.*, and the said *A. B.* and the plaintiff each duly performed all the conditions of said insurance on their part.
7. That the defendant has not paid the same, and the said sum is now due thereon from the defendants to the plaintiff, as such executor.

[*Demand of judgment.*]

**No. 789.—Complaint—Same—By Wife, Partner, or Creditor.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *fifth* day of *September, 1892*, at *R.*, the defendant, in consideration of the [*annual or otherwise*] payment to it of \$800, executed to the plaintiff a policy of insurance on the life of her husband, *A. B.*, of which a copy is hereto annexed, and made a part of this complaint, and marked "*Exhibit A.*"

2. That the plaintiff had a valuable interest in the life of the said *A. B.* at the time of his death, and at the time of effecting the said insurance [*state nature of interest*].

3. That on the *twenty-first* day of *October, 1894*, at *R.*, the said *A. B.* died.

4. That on the *twenty-third* day of *October, 1894*, the plaintiff furnished the defendant with proof of the death of the said *A. B.*, and otherwise performed all the conditions of the said policy on her part.

5. That the defendant has not paid the said sum, nor any part thereof.

[*Demand of judgment.*]

[*Annex a copy of policy, marked "Exhibit A."*]

**No. 790.—Complaint—By Assignee in Trust for Wife.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains and alleges:

1. [*Allege incorporation as heretofore.*]

2. [*Same as by executor on life policy.*]

3. That on the *first* day of *March, 1893*, the said *A. B.*, [with the written consent of the defendants, or otherwise, according to the terms of the policy], assigned said policy of insurance to this plaintiff, in trust for *E. B.*, his wife.

4. That up to the time of the death of *A. B.* all premiums accrued upon said policy were fully paid.

5. That on the *fifth* day of *June, 1894*, at *L.*, said *A. B.* died.

6. That said *A. B.* and the plaintiff each performed all the conditions of said insurance on their part, and the plaintiff, more than *ten* days before the commencement of this action, to wit: on the *tenth* day of *June, 1894*, at *L.*, gave to defendants notice and proof of the death of said *A. B.*, as aforesaid, and demanded payment of the said sum of \$10,000.

7. That the defendant has not paid the same, nor any part thereof.

[*Demand of judgment.*]

**No. 791.—Complaint—Cargo Lost by Fire.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. [*Allege incorporation as heretofore.*]
2. That plaintiff was the owner of [*or had an interest in*] two hundred barrels of flour, shipped on board the vessel called the *A. D.*, from *M.* to *N.*, at the time of the insurance and loss hereinafter mentioned.
3. That on the *fourth* day of *January*, 1894, at *M.*, the defendant, in consideration of \$25, which the plaintiff then paid, executed to him a policy of insurance upon the said goods, a copy of which is hereto annexed, marked "*Exhibit A.*" and made part of this complaint [*or whereby it promises to pay to the plaintiff \$2,000 in case of the total loss, by fire or other causes mentioned, of the said goods, before their landing at N., or in case of partial damage, such loss as the plaintiff might sustain thereby, provided the same should not exceed fifty per centum of the whole value of the goods.*].
4. That on the *twenty-first* day of *March*, 1894, at *C.*, while proceeding on the voyage mentioned in the said policy, the said goods were totally destroyed by fire.
5. That the plaintiff's loss thereby was \$2,000.
6. That on the *first* day of *April*, 1894, he furnished the defendant with proof of his loss and interest, and otherwise performed all the conditions of the said policy on his part.
7. That the defendant has not paid the said loss, nor any part thereof.

[*Demand of judgment.*][*Annex copy of policy, marked "Exhibit A."*]**No. 792.—Complaint—On a Foreign Judgment.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That at the times hereinafter mentioned, the Court of Common Pleas, in and for the County of *R.*, in the State of *Ohio*, was a Court of general jurisdiction, duly created and organized by the laws of said State.
2. That on the *twenty-first* day of *May*, 1894, the plaintiff commenced an action in said Court against the defendant by the issuance of summons [*or other process, as the case may be*], which summons was duly and personally served upon said defendant [*or in which action the defendant appeared in person, or by attorney*]. That thereupon such proceedings were had therein in said Court, that on the *twenty-fourth* day of *July*, 1894, a judgment for the sum of \$376 was duly given and made by said Court in favor of the plaintiff, and against the defendant.
3. That no part thereof has been paid, except, *etc.*

[*Demand of judgment.*]



**No. 793.—Complaint—Penalty under Statute—General Form.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *tenth* day of *September, 1894*, at *R.*, the defendant [*here state acts constituting a violation of the statute, either following the words of the statute, or setting forth the facts more specifically*] against the form of the statute [*or statutes, as the case may be*], in such case made and provided.

2. That thereby the defendant became indebted in the sum of [*amount of penalty*] to [*one for whose use the action is given*], whereby an action accrued to the plaintiff according to the provisions of [*describing the statute in such terms as the case may require*].

[Demand of judgment.]

**No. 794.—Complaint—For Selling Liquor without a License.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *twenty-fourth* day of *December, 1893*, at *P.*, the defendant sold to one *A. B.*, [*or to divers persons*] strong liquors [*or spirituous liquors or wines*], in quantities less than by the bottle [*or otherwise, according to the terms of the ordinance or statute*].

2. That the defendant had not then a license to sell liquors, as required by the Act, entitled "*An Act,*" etc., [*giving title of Act in full*], passed on the *fifth* day of *March, 1891*.

3. That thereby the defendant became, and is indebted to the plaintiff in the sum and penalty of *\$350*, for said act of selling [*or each and every of said acts of selling*], whereby this action has accrued to the plaintiff, according to the provisions of said Act, for the said sum of *\$350* [*or if more than one penalty is claimed, for the aggregate amount or sum, or whatever the amount may be*].

[Demand of judgment.]

**No. 795.—Complaint—Against a Witness, for Disobeying Subpœna.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *third* day of *February, 1894*, at *P.*, the plaintiff caused the defendant to be duly served with a subpœna commanding him to attend as a witness in the Superior Court, in and for the County of *Kern*, in this State, on the *fifth* day of *February, 1894*, there to give testimony on behalf of the plaintiff in an action in said Court pending, wherein this plaintiff was the plaintiff, and one *C. D.* was defendant [*or otherwise designate the proceedings*].

2. That at the same time the plaintiff caused \$2, the lawful fees of the said witness, to be paid [or tendered] to him.

3. That defendant failed to attend as commanded, whereby the defendant became indebted to the plaintiff in the amount of \$500, according to the provisions of the statute [describe the statute].

4. That by reason of the premises, the defendant forfeited to the plaintiff the sum of \$350.

[If special damages are claimed, add:] 5. And for a second cause of action, the plaintiff alleges that because of the said failure of the said defendant to attend said trial as such witness as aforesaid, the plaintiff, when said action was called for trial, was compelled, for want of the testimony of said defendant, without whose testimony he could not safely proceed to the trial of said action, to move the said Court to continue the said action; and said Court did continue the same, and the plaintiff was compelled to pay on said continuance, as costs, \$500, which sum he was compelled to pay by reason of the said failure of said defendant to attend as such witness aforesaid, to the damage of plaintiff in the sum of \$500.

#### No. 796.—Complaint—For Violation of Ordinance.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on or about the *fifth* day of *October, 1893*, the Board of Supervisors of the County of *Napa*, in pursuance of the power in them vested by law, passed a law entitled, "*An order, regulation, or ordinance,*" etc., [giving title of the same], a copy of which is annexed as a part of this complaint.

2. That since the passing thereof, to wit: on the *fifth* day of *December, 1894*, the defendant [here state fully wherein the defendant has disobeyed the order], contrary to the provisions of the said ordinance above mentioned.

3. That by reason of the premises, the defendant forfeited to the plaintiff the sum of \$500.

[Demand of judgment.]

#### No. 797.—Complaint—For Price of Goods.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *sixth* day of *March, 1894*, at *P.*, the defendant, in consideration of his reasonable commissions, agreed with plaintiff to sell for plaintiff certain goods [fifty barrels of flour].

2. That on the *tenth* day of *March, 1894*, at *P.*, he delivered to defendant fifty barrels of flour, for sale upon commission.

3. That on the *twenty-fifth* day of *March, 1894*, [or on some other day unknown to the plaintiff, before the *thirtieth* day of *March, 1894*], the defendant sold the said merchandise for \$390.

4. That the commission and expenses of the defendant thereon amounted to \$15.

5. That on the *fourth* day of *April*, 1894, the plaintiff demanded from the defendant the proceeds of the said merchandise.

6. That he has not paid the same, nor any part thereof.

[Demand of judgment.]

### No. 798.—Complaint—Lender against Borrower.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *sixth* day of *January*, 1894, at *P.*, he lent to the defendant, at his request, \$500.

2. That the defendant has not paid the same, nor any part thereof.

Wherefore, the plaintiff demands judgment for \$500, with interest from the *sixth* day of *January*, 1894.

### No. 799.—Complaint—For Money Paid to a Third Party.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *twelfth* day of *January*, 1894, at *P.*, at the request of defendant, plaintiff paid to one *A. B.* \$1550.

2. That in consideration thereof, defendant promised to pay the same to plaintiff.

3. That on the *fourth* day of *May*, 1895, the plaintiff demanded payment of the same from the defendant, but he has not paid the same, nor any part thereof.

[Demand of judgment.]

### No. 800.—Complaint—For Repayment of Money Paid.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on or about the *eighteenth* day of *January*, 1893, judgment was rendered against this plaintiff in the Superior Court of the County of *Sierra*, State of *California*, in an action wherein the defendant was plaintiff, and this plaintiff was defendant, for the sum of \$2500.

2. That on the *twenty-fifth* day of *March*, 1894, at *Grass Valley*, the plaintiff paid to the defendant the sum of \$2500, in satisfaction thereof.

3. That afterwards, on the *tenth* day of *April*, 1895, by the judgment of the Supreme Court of said State of *California*, said first mentioned judgment was reversed; but that no part of the said sum paid in satisfaction thereof has been repaid to this plaintiff.

[Demand of judgment.]



**No. 801.—Complaint—For Repayment of Deposit on Purchase of Real Estate.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *twenty-first* day of *January, 1894*, the plaintiff and the defendant made their contract in writing, subscribed by them, whereby it was mutually agreed that the said defendant should sell to this plaintiff, and the plaintiff should buy from the defendant, certain real estate [*describe it*], for the sum of \$2500, to be paid by the plaintiff; that the defendant should make a good title to the said premises, and deliver a deed thereof on the *twenty-third* day of *January, 1894*, and that the plaintiff should thereupon pay to the said defendant the said purchase money.

2. That the plaintiff, as a security, as well for the performance of said agreement on his part as to secure a performance thereof on the part of the defendant, then and there deposited in the hands of said defendant the sum of \$1250, as part of said purchase money, to be to and for the use of the defendant, and to be retained by him on account of the purchase money, if the plaintiff should complete his purchase and receive the deed; but to be to and for the use of the plaintiff, and to be returned to him, if the defendant should fail to fulfill his agreement to give a deed at the time and pursuant to the agreement.

3. That he has always been ready and willing to do and perform everything in the agreement contained on his part, and on the said *twenty-third* day of *January, 1894*, was ready and willing, and offered to the defendant to accept the deed of the premises pursuant to the agreement, and to pay to him the balance of the purchase money due therefor.

4. That the defendant did not on the said *twenty-third* day of *January, 1894*, nor at any time since, give him a deed of the premises pursuant to the agreement, but refused to do so.

5. That on the *third* day of *February, 1895*, he demanded of the defendant payment of the sum of \$1250, deposited with him as aforesaid.

6. The defendant has not paid the same, nor any part thereof.  
[Demand of judgment.]

**No. 802.—Complaint—To Recover Back a Wager.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *twenty-second* day of *January, 1894*, at *M.*, the plaintiff deposited in the hands of the defendant, as stakeholder, \$500, which was to abide the event of a wager made between the plaintiff and one *A. B.*, on the result of [*here state what, as election, race, or otherwise*].

2. That such wager was in violation of the statute entitled,

"An Act," etc., [title of Act], passed January 21, 1890, and the Acts amendatory thereof and supplementary thereto.

3. That no decision has as yet been rendered upon said election [race or otherwise]; and that the defendant still retains said money as stakeholder.

4. That on the second day of February, 1894, the plaintiff demanded the return of said money of the defendant.

5. That the defendant has not returned or paid back the same. [Demand of judgment].

**No. 803.—Complaint—For Services at a Fixed Price.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That between the thirtieth day of January, 1894, and the twenty-eighth day of February, 1894, plaintiff rendered services to the defendant, at his special instance and request, in the capacity of clerk [or otherwise].

2. That for said services the defendant promised to pay plaintiff a salary at the rate of \$150 per month.

3. That the defendant has not paid the said salary [or that no part of said salary has been paid, except, etc.].

[Demand of judgment.]

**No. 804.—Complaint—By Parent, for Services of Minor Son.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That one A. B. rendered services as clerk to the defendant, at his request, at his store at P., from the first day of February, 1894, to the first day of March, 1894.

2. That such services were reasonably worth \$300 [or allege price agreed, as in preceding forms].

3. That the said A. B. was then, and is now, under twenty-one years of age, and the minor child of this plaintiff.

4. That the defendant has not paid the same, nor any part thereof.

[Demand of judgment.]

**No. 805.—Complaint—For Services and Materials, at a Fixed Price.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the third day of February, 1894, at P., he furnished the paint, and painted defendant's house, at defendant's request.

2. That defendant promised to pay him \$75 therefor.

3. That he has not paid the same [or that no part of the same has been paid, except, etc.].

[Demand of judgment.]

### No. 806.—Complaint—Hire of Furniture—Damages for Ill-use.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

*First*—For a first cause of action:

1. That on the *second* day of *March, 1894*, at *M.*, the plaintiff rented to the defendant, and the defendant hired from the plaintiff, household furniture, plate, pictures, and books, the property of the plaintiff, to wit: [*describe the articles*], for the space of *three years*, then next ensuing, to be returned by him to the plaintiff at the expiration of said time, in good condition, reasonable wear and tear thereof excepted.

2. That he promised to pay the plaintiff for the use thereof *\$300, in equal monthly payments, on the second day of each month thereafter.*

3. That no part thereof has been paid.

*Second*—For a second cause of action:

1. [*Allege as in preceding form.*]

2. The plaintiff further alleges that the value of the property so hired by the defendant as above alleged, was *\$2950.*

3. That the defendant, in violation of his said agreement to return the same in good condition, neglected the same, and through his negligence, carelessness, and ill-use, the same became broken, defaced, and injured beyond the reasonable wear thereof, and in that condition were returned to the plaintiff, to his damage *\$500.*

[*Demand of judgment.*]

### No. 807.—Complaint—Foreign Bills—Payee against Drawer.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *sixth* day of *March, 1894*, at *M.*, the defendant made and delivered to the plaintiff his certain bill of exchange of that date, of which the following is a copy: [*Copy the bill*].

2. That on the *sixth* day of *May, 1894*, the same was duly presented to the said *A. B.* for acceptance, but was not accepted, and was thereupon duly protested for non-acceptance.

3. That due notice thereof was given to the defendant.

4. That he has not paid the same.

5. That the value of a similar bill of exchange at the time of said protest, in *M.*, that being the place where said bill was negotiated, and where such bills were currently sold, was *\$1000.*

Wherefore, the plaintiff demands judgment against the defendant for the sum of *\$1000* (the amount named in the bill), and *\$200* damages, and interest on the said sums from the *sixth* day of *May, 1894*, [*date of protest*], and costs of suit.



**No. 808.—Complaint—On Promissory Note—Holder v. Indorser and Maker.**

[TITLE OF COURT AND CAUSE.]

*John Doe and Richard Roe*, the plaintiffs in the above entitled action, complaining of *John Smith, Thomas Jones, James Brown, and Charles Black*, the defendants in the said action, allege:

That at the times hereinafter mentioned, the said plaintiffs were partners, doing business as traders at the City and County of San Francisco, under the firm and style of "*John Doe & Co.*"; and the said defendants, *John Smith and Thomas Jones*, were partners, doing business as merchants in the said city and county, under the firm and style of "*John Smith & Co.*"; and the said defendants, *James Brown and Charles Black*, were partners, doing business as merchants at the said city and county, under the firm and style of "*Brown & Black.*"

That on the ninth day of August, 1894, at the said City and County of San Francisco, the said defendants *John Smith and Thomas Jones*, partners as aforesaid, by the name and style of "*John Smith & Co.*," made their certain promissory note in writing, payable in gold coin of the United States, bearing date on that day, which said promissory note is in the words and figures following, to wit: [*Copy of the note*]. And then and there delivered the said promissory note to the said defendants, *Brown & Black*, partners as aforesaid, who then and there, by their said name and style, indorsed the same, and delivered it so indorsed to the said plaintiffs.

That afterwards, when said note became due and payable, to wit: on the ninth day of October, 1894, it was presented to the said defendants, *John Doe and Richard Roe*, partners as aforesaid, and payment thereof was demanded and refused; of all which the said defendants, *James Brown and Charles Black*, partners as aforesaid, had due notice.

That said defendants, or either of them, have not paid said note, or any part thereof, and the same remains wholly due and unpaid.

That the said plaintiffs are now the owners and holders of said promissory note.

Wherefore, the said plaintiffs pray judgment against the said defendants for the sum of four thousand dollars, with interest thereon from the ninth day of August, 1894, at the rate of one per cent. per month, and costs of suit, and that said judgment be made payable in gold coin of the United States.

**No. 809.—Complaint—Money Had and Received.**

[TITLE OF COURT AND CAUSE.]

*Wm. J. Heney*, the plaintiff in the above entitled action, complaining of *Little T. John*, the defendant in said action, alleges:

1. That on the ninth day of August, 1894, at the City and County of San Francisco, State of California, the said defendant re-

ceived from the said plaintiff, as the agent of said plaintiff, the sum of one thousand dollars, to the use of said plaintiff, which he agreed to pay to plaintiff on demand.

2. That thereafter, and before this action was commenced, the said plaintiff demanded payment thereof from the said defendant.

3. That the said defendant has not paid the said sum, nor any part thereof; and the same is due.

Wherefore, the said plaintiff prays judgment against the said defendant for the said sum of one thousand dollars, interest, and costs of suit.

### No. 810.—Complaint—On Promissory Note.

[TITLE OF COURT AND CAUSE.]

The plaintiff in the above entitled action, complaining of the defendant in said action, alleges:

That on the eighth day of June, 1894, at the City and County of San Francisco, the said defendant, William Barnes, made his certain promissory note, in writing, bearing date on that day, which said promissory note is in the words and figures following, to wit:

\$3000.

San Francisco, June 8, 1894.

Sixty days after date, without grace, I promise to pay to John Jones, or order, the sum of three thousand (3000) dollars, payable only in gold coin of the Government of the United States, for value received, with interest thereon, in like gold coin, at the rate of one per cent. per month from date until paid. WILLIAM BARNES.

And then and there delivered the said promissory note to the said John Jones, who afterwards, on the said eighth day of June, 1894, duly indorsed, assigned, and delivered said promissory note to the plaintiff herein.

That the said plaintiff is now the lawful owner and holder of the said promissory note.

That no part of the said promissory note, or of the interest thereon, has been paid.

That there is now due and unpaid to the said plaintiff on said promissory note, the sum of three thousand (3000) dollars, U. S. gold coin, and interest thereon at the rate of one per cent. per month from June 8, 1894.

Wherefore, the said plaintiff prays judgment against the said defendant for the sum of three thousand (3000) dollars, U. S. gold coin, with interest thereon at the rate of one per cent. per month from June 8, 1894, and costs of suit, and that said judgment be rendered and made payable in U. S. gold coin, pursuant to the terms of said promissory note.

**No. 811.—Complaint—By Acceptor, without Funds, v. Drawer.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *fourteenth* day of *March, 1894*, at *M.*, the defendant became indebted to him for money advanced by him, and paid by him, upon a certain draft drawn by the defendant, bearing date on the *fourteenth* day of *February, 1894*, whereby the defendant requested the plaintiff, *thirty* days after date, to pay to one *A. B.* the sum of *\$500*.

2. That on the *fourteenth* day of *March, 1894*, at *M.*, the plaintiff accepted said draft, and paid it.

[*Or, 2.* That the plaintiff accepted said draft, and paid the same at maturity].

3. That at the time of the acceptance and payment of said draft, the plaintiff was without funds of the defendant in his hands to meet the same.

4. That defendant has not paid the same, nor any part thereof.

[*Demand of judgment.*]

**No. 812.—Complaint—By a Copartnership v. Draft Accepted and Paid.**

[TITLE OF COURT AND CAUSE.]

The plaintiffs complain, and allege:

1. That on the *fifteenth* day of *March, 1893*, the defendants, then composing the firm of *C. D. & Co.*, drew their certain bill of exchange, in said copartnership name, at *M.*, and directed the same to the plaintiffs at *M.*, who then were and now are copartners, doing business under the firm name of *A. B. & Co.*, by which bill of exchange the said defendants requested the plaintiffs to pay to the order of said defendant, *four* months after date, the sum of *\$1250*, for value received.

2. That said bill of exchange the plaintiffs afterwards accepted and paid in full.

3. That no funds were provided by said defendants, either before or after the same was drawn as aforesaid, for the payment thereof, and the plaintiffs have had no funds of said defendants at any time in their hands to pay the same.

[*Demand of judgment.*]

**No. 813.—Complaint—By Contractor, on Special Contract, Modified, with a Claim for Extra Work.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

*First*—For a first cause of action:

1. That on the *fifteenth* day of *May, 1894*, at *P.*, the defendant,



under his hand and seal, made a contract in writing with the plaintiff, of which the following is a copy: [*Copy contract*].

2. That he has duly performed all the conditions thereof on his part, except that, at the request of the defendant, he finished the building with hard finish instead of cloth and paper, for which the defendant promised to pay a reasonable sum in addition to the price named in the contract. That by the consent of the defendant the time for completing said work was extended for *one* month beyond the time fixed for the contract, to wit: to the *fifteenth* day of *July, 1894*.

3. That the plaintiff on his part duly performed all the conditions of said contract as modified.

4. That the sum of \$350 is a reasonable payment to be made, in addition to the price named in said contract, for finishing the building with hard finish instead of cloth and paper.

5. That on the *fifteenth* day of *August, 1894*, at *P.*, the plaintiff demanded of the defendant payment of the sum of \$2500, the amount due on said contract as modified.

6. That he has not paid the same, nor any part thereof.

*Second*—For a second cause of action:

1. That between the *fifteenth* day of *May, 1894*, and the *fifteenth* day of *July, 1894*, at *P.*, the plaintiff rendered further services and furnished materials to the defendant, at his request, in [*here state extra work and material*], for which the defendant promised to pay.

2. That the same are reasonably worth \$480.

3. That he has not paid the same, nor any part thereof.

[*Demand of judgment.*]

#### No. 814.—Complaint—Against a Builder—Special Damage for Loss of Rent.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *fourteenth* day of *May, 1895*, at *P.*, the plaintiff and the defendant entered into an agreement, under their hands and seals, of which a copy is annexed as a part of this complaint, marked "*Exhibit A.*"

2. That the plaintiff duly performed all the conditions thereof on his part.

3. That the defendant entered upon the performance of the work under said contract, but has neglected to finish the said contract [*state what he has neglected*], and that although the time for the completion of said building expired before commencement of this action, he neglects and refuses to complete the same.

4. That the plaintiff, on the *fifteenth* day of *June, 1895*, at *P.*, made an agreement with one *A. B.*, whereby he agreed to let, and said *A. B.* agreed to hire, the said building for *two* months, from the *sixteenth* day of *June, 1895*, to the *sixteenth* day of *August*,

1895, at the monthly rent of \$250, of which the defendant had notice.

5. That by reason of the defendant's failure to complete the contract aforesaid on his part, the plaintiff has been unable to give said *A. B.* occupancy thereof, and has been thereby deprived of the profits of said lease, to his damage \$750 gold coin.

[Demand of judgment.]

[Annex agreement marked "Exhibit A."]

### No. 815.—Complaint—Warranty of Title to Real Property.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *seventeenth* day of *May, 1893*, at *P.*, the defendant, in consideration of \$2500 to him paid, granted to the plaintiff, by deed [*here insert description*], and in his said deed warranted that he had good title in fee simple to the said property, and would defend the plaintiff in his possession of the same.

2. That the defendant was not, but one *A. B.* was, then the lawful owner of the said lands, in fee simple.

3. That on the *nineteenth* day of *May, 1893*, the said *A. B.* lawfully evicted the plaintiff from the same, and still withholds the possession thereof from him.

[Demand of judgment.]

### No. 816.—Complaint—Breach of Covenant of Warranty.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *eighteenth* day of *May, 1893*, at *P.*, the defendant, by his deed of that date, duly executed, in consideration of \$500, sold and conveyed in fee simple, to the plaintiff, certain land: [*Describe it*].

2. That the defendant, by the same deed, covenanted as follows: [*Copy the covenant*].

3. That the defendant had not, at the time of the execution of said deed, a good and sufficient title to said premises, and by reason thereof, on the *twenty-fifth* day of *May, 1893*, at *P.*, the plaintiff was ousted and dispossessed of the said premises by due course of law.

[Or, 3. That one, *G. H.*, at the time of the execution of the said deed, and from thence, had lawful right and paramount title to the said premises, and, by virtue thereof, after the execution of said deed, on the *twenty-fifth* day of *May, 1893*, entered upon the possession thereof, and ousted and dispossessed by due process of law, and kept, and still keeps, the plaintiff from the possession of the same. That the plaintiff has also been compelled to pay the costs and charges sustained by the said *G. H.* in prosecuting a certain action in the Superior Court, in Sonoma County, for the recovery of

said premises, which amounted to \$500, and to pay out the additional sum of \$300 in endeavoring to defend such action.]

[Demand of judgment.]

### No. 817.—Complaint—Covenant against Incumbrances.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *twenty-second* day of *May, 1896*, at *P.*, the defendant, in consideration of \$2000, to him paid, granted to the plaintiff, by deed, in fee simple, a lot in the Town of *P.*, County of *Napa* [or otherwise briefly designate the property].

2. That said deed contained a covenant on the part of the defendant, of which the following is a copy: [*Copy of covenant*].

3. That at the time of the making and delivery of said deed the premises were not free from all incumbrances, but, on the contrary, the defendant before that time, on the *twenty-fifth* day of *January, 1896*, at *P.*, by deed, in the nature of a mortgage, duly executed, had mortgaged the said premises to one *R. S.*, to secure the payment of \$900, with interest.

4. And, for a further breach, the plaintiff alleges that on the *fifteenth* day of *February, 1896*, in the Superior Court of *Napa* County, in this State, judgment was rendered against the defendant for the sum of \$400, in an action in which the said *incumbrancer* was plaintiff, and the defendant herein was defendant, which judgment was, on the *nineteenth* day of *February, 1896*, docketed in said county of [*where premises are situated*], and which judgment, at the time of the execution and delivery of the deed in the nature of a mortgage, remained unpaid and unsatisfied of record.

5. And, for a further breach, the plaintiff alleges that at the time of the execution and delivery of said deed the premises were subject to a tax theretofore duly assessed, charged, and levied upon the said premises by the said City of *P.*, and the officers thereof, of the sum of \$50, and which tax was then remaining due and unpaid, and was at the time of the delivery of said deed a lien and incumbrance by law upon the said premises.

6. That by reason thereof the plaintiff paid on the *third* day of *June, 1896*, the sum of \$135, in extinguishing the [*here state what, whether the judgment, lien, tax, or other incumbrances, or all of them*], aforesaid, to his damage \$1350.

[Demand of judgment.]

### No. 818.—Complaint—Breach of Covenant of Quiet Enjoyment.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *twenty-fifth* day of *May, 1894*, at *P.*, the defendant, by deed [or lease under seal], let to the plaintiff, and



the plaintiff rented from the defendant, the house numbered 61 *R street*, in *P.*, for the terms of *three* years, convenanting that the plaintiff should quietly enjoy possession thereof for the said term.

2. That on, *etc.*, one *A. B.*, who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

3. That the plaintiff was thereby prevented from continuing the business of *merchandising* at the said place, and was compelled to expend \$1000 in moving, and lost the custom of *C. D.*, *E. F.*, and *G. H.*, and divers other persons, by such removal.

[*Demand of judgment.*]

### No. 819.—Complaint—Breach of Contract to Employ.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *twenty-sixth* day of *May*, 1894, at *P.*, the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as *an accountant*, and that the defendant should employ the plaintiff as such for the term of [*one year, or as the case may be*], and pay him for his services \$65 monthly [*or as the case may be.*]

2. That on the *twenty-seventh* day of *May*, 1894, the plaintiff entered upon the service of the defendant under said agreement, and has ever since been, and still is, ready and willing to continue in such service.

3. That on the *twenty-seventh* day of *August*, 1894, the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, though the plaintiff then and there offered to continue in said service, and perform said agreement on his part, to the damage of the plaintiff \$1550.

[*Demand of judgment.*]

### No. 820.—Complaint—Breach of Contract to Serve.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *twenty-seventh* day of *May*, 1894, at *P.*, the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at a *monthly* compensation of \$500, and that the defendant should serve the plaintiff as *bookkeeper* for the term of *one year*.

2. That the plaintiff has always been ready and willing to perform his part of the said agreement, and on the *twenty-ninth* day of *May*, 1894, offered so to do.

3. That the defendant refused to serve the plaintiff as aforesaid, to his damage \$2500.

[*Demand of judgment.*]

**No. 821.—Complaint—On Promise to Manufacture Material.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *thirtieth* day of *May, 1895*, at *P.*, the plaintiff delivered to the defendant *fifty sides of leather*, of the value of *\$20*, to be manufactured into harness for a reasonable compensation, to be paid to the defendant by the plaintiff.

2. That the defendant, in consideration thereof, undertook to manufacture the said *harness*, or cause it to be manufactured from the *leather*, and to deliver the same to the plaintiff when so manufactured.

3. That the said *leather* was so manufactured into *harness* by the defendant before the *thirtieth* day of *June, 1895*, on which day the plaintiff demanded the same of the defendant, and then and there offered to pay him a reasonable compensation for manufacturing the same.

[*Or, 3. That the defendant did not manufacture said leather into harness, although a reasonable time therefor elapsed before this action.*]

4. That the defendant then, and ever since, refused and neglected to deliver the same, and has converted them to his own use.

[*Or, 4. That the defendant manufactured said leather in such a negligent and unskillful manner, that the said harness was of no value.*]

[*Demand of judgment.*]

**No. 822.—Complaint—Surety Against Principal, for Indemnity.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *second* day of *June, 1894*, at *P.*, in consideration that the plaintiff would become surety for him, by executing an undertaking, of which a copy is annexed as a part of this complaint, marked "*Exhibit A*," the defendant agreed with the plaintiff that he would indemnify him, and save him harmless from and against all damages, costs, and charges which he might sustain by reason of his becoming surety, as aforesaid.

2. That the plaintiff, confiding in such promise of the defendant, executed and delivered such undertaking.

3. That the defendant did not indemnify the plaintiff, and save him harmless from such damages, costs, and charges; but, on the contrary, the plaintiff, under a judgment, on the *fifth* day of *August, 1894*, rendered against him by the Justice's Court, at *P.*, in an action brought against him upon said undertaking, paid, on the *sixth* day of *August, 1894*, *\$50* to *A. B.*, in satisfaction and discharge of said undertaking, and also necessary costs

and expenses in said action and on account of said undertaking, to the amount of \$350.

4. That notice thereof was given to the defendant, and that the plaintiff duly performed all the conditions of the said agreement on his part.

5. That the defendant has not paid the same to the plaintiff.  
[Demand of judgment.]

[Annex copy of undertaking, marked "Exhibit A."]

### No. 823.—Complaint—Refusal to Marry.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That heretofore, to wit: on the *fifth* day of *June*, 1894, at *P.*, in consideration that the plaintiff, being then sole and unmarried, at the request of the said defendant, had then promised the said defendant to marry him, the said defendant, on request, the defendant promised to marry the plaintiff within a reasonable time [*or, if a time certain was agreed upon, state the time*].

2. That the plaintiff, confiding in said promise, has always since remained, and continued, and still is, sole and unmarried, and has been for and during the time aforesaid, and now is, ready and willing to marry the defendant.

3. That the defendant refuses to marry the plaintiff, although a reasonable time elapsed before this action [*or, although she, on the twenty-fifth day of June, 1894, requested him so to do*], to her damage in the sum of \$400.

[Demand of judgment.]

### No. 824.—Complaint—Seller against Purchaser.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *sixth* day of *June*, 1894, at *P.*, the plaintiff and defendant entered into an agreement, in substance as follows:  
[State the agreement.]

2. That the plaintiff duly performed all the conditions of said contract on his part, and was, on the *sixth* day of *July*, 1894, at *P.*, the day and place of delivery, ready and willing to deliver said property, and tendered the same to the defendant.

3. That defendant refused to accept said goods, or pay for them, pursuant to said agreement, to the damage of the plaintiff \$1250.

[Demand of judgment.]

### No. 825.—Complaint—For not Giving Security.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *eighth* day of *June*, 1894, at *P.*, the plaintiff caused to be put up and exposed for sale by public auction, in



lots, certain goods and chattels, one of the said lots being a certain carriage, subject to the following terms, to wit: that the highest bidder should be the purchaser, and that the purchaser should be allowed *seven months'* credit for the payment of the price, after giving such security as should be approved of by *A. B.* on the part of the plaintiff; *or that such purchaser should, at his election, pay down the purchase price at the time of the sale, and in that event that five per cent. should be deducted, by way of discount, from the amount of the purchase money, of all of which said terms the defendant, at the time of the sale, had notice.*

2. That at the said sale the defendant was the highest bidder for, and was declared to be the purchaser of, the said carriage, subject to said terms of sale, for \$2500.

3. That the plaintiff then delivered the carriage to the defendant, as such purchaser, and was then, and has since been, always ready and willing to perform the said contract on his part.

4. That the defendant has not, although then requested by the plaintiffs, paid any part of the said sum of \$2500, nor has he given any security for the same, according to the said terms of sale.

[*Demand of judgment.*]

#### No. 826.—Complaint—For not Delivering.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *eleventh* day of *June, 1894*, at *P.*, the plaintiff agreed with the defendant to buy of him, and the defendant then agreed to sell to the plaintiff, and to deliver to him on the *twenty-first* day of *June, 1894*, at *P.*, *fifty thousand bushels of oats, at the price of 50 cents per bushel*, to be paid for on the delivery thereof.

2. That the said time for the delivery of the said *oats* has elapsed, and that plaintiff has always been ready and willing to receive the said *oats*, and to pay for them at the price aforesaid, on delivery, according to the terms of said agreement, of all which the defendant had notice.

3. That the defendant has not delivered the same, nor any part thereof, to the plaintiff, at *P.*, or elsewhere.

4. That the plaintiff has thereby lost profits, and has sustained damage to the amount of \$12,250.

[*Demand of judgment.*]

#### No. 827.—Complaint—Against Seller of Stock.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *thirteenth* day of *June, 1894*, at *P.*, the plaintiff and defendant entered into an agreement, subscribed by them, whereby it was mutually agreed between them that the defendant should sell and deliver to the plaintiff, at such time, within *ten*

days thereafter, as the plaintiff should elect, ten shares of the capital stock of the Pacific Wild Cat and Orange Development Company, and that plaintiff should pay therefor \$2250.

2. That on the eighteenth day of June, 1894, the plaintiff tendered to said defendant the said sum of \$2250, and otherwise duly performed all the conditions of said agreement on his part, and demanded of the defendant that he deliver said shares of stock to the plaintiff.

3. That the defendant has not delivered the same.

[Demand of judgment.]

### No. 828.—Complaint—Warranty of Title.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the second day of July, 1894, at P., the defendant sold to the plaintiff [state the article sold] for \$1500.

2. That by said contract of sale it was understood by the plaintiff and the defendant to be, and it was, a part of the terms and consideration of said contract of sale, that the defendant had the lawful right and title to so sell, and to transfer the ownership of said goods to the plaintiff.

3. That the defendant had, in fact, no right or title to sell or dispose of said goods.

4. That one E. F. then was the owner of said goods, and afterwards, on the tenth day of July, 1894, he demanded possession of the same from the plaintiff; and the plaintiff was compelled, and did then deliver them up to E. F., and they were wholly lost to the plaintiff.

5. That by reason of the premises the plaintiff was misled and injured, to his damage \$1500.

[Demand of judgment.]

### No. 829.—Complaint—Cause of Action under Money Count.

[TITLE OF COURT AND CAUSE.]

The plaintiffs complain, and allege:

1. That at the times hereinafter mentioned the plaintiffs were partners, doing business at the City and County of San Francisco, State of California, under the firm name of A. B. & Co., and the defendants were partners, doing business at the said City and County of San Francisco, under the firm name of C. D. & Co.

First—For a first cause of action, the plaintiffs allege:

1. That on the sixth day of July, 1894, at S. F., at the request of the defendants, the plaintiffs deposited with the defendants the sum of \$1000, gold coin of the United States, which sum the defendants promised to pay to the plaintiffs on demand.

2. That on the fifteenth day of July, 1894, at S. F., the plaintiffs demanded payment of the same from the defendants, but they have not paid the same.

*Second*—And for a second cause of action, the plaintiffs allege:

1. That on the *ninth* day of *July, 1894*, at *S. F.*, the defendants received \$500 from one *E. F.*, to be paid to the plaintiffs.

2. That the defendants have not paid the same.

*Third*—And for a third cause of action, the plaintiffs allege:

1. That on the *tenth* day of *July, 1894*, at *S. F.*, the plaintiffs lent to the defendants \$600.

2. That the defendants have not paid the same.

[*Demand of judgment.*]

### No. 830.—Complaint—Against a Corporation—Assault and Forcible Ejection from a Car.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That at the time hereinafter mentioned, the defendant was, and now is, a corporation, duly organized under and pursuant to the laws of this State, and was the owner of a certain railroad known as the *C. P. Railroad*, with the track, cars, and other appurtenances thereunto belonging, and was a common carrier of passengers from *P.* to *R.*

2. That on the *eleventh* day of *July, 1894*, at *P.*, the defendant, with unnecessary violence, assaulted the plaintiff, and forcibly ejected him from one of its cars.

3. That the plaintiff was thereby disabled from attending to his business for three weeks thereafter, and has ever since been disabled from using his left foot, *or otherwise*, and was compelled to pay \$1000 for medical attendance, to the damage of the plaintiff \$2750.

[*Demand of judgment.*]

### No. 831.—Complaint—False Imprisonment.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains and alleges:

1. That on the *twelfth* day of *July, 1894*, at *P.*, the defendant imprisoned him for *ten* days [*or hours, as the case may be*], without probable cause [*state special damages, if any*], to the damage of the plaintiff \$1250.

[*Demand of judgment.*]

### No. 832.—Complaint—Libel—Words not Libelous in Themselves.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That the plaintiff is, and was, on and before the *fourteenth* day of *July, 1894*, a merchant doing business in the City of *P.*

2. That on the *fourteenth* day of *July, 1894*, at *P.*, the defendant published in a newspaper called the *News* [*or in a letter ad-*



dressed to *E. F.*; or if otherwise, show how published], the following words concerning the plaintiff: "*A. B. of this city has modestly retired to foreign lands. It is said that creditors to the amount of \$1000 are anxiously seeking his address.*"

3. That the defendant meant thereby that the plaintiff had absconded to avoid his creditors, and with intent to defraud them.

4. That the publication was false.

[Demand of judgment.]

**No. 833.—Complaint—Charge of Crime—Words not Libelous on their Face.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That at the time hereinafter mentioned, the *dwelling-house* of the defendant had been burned down, and it was suspected that it had been feloniously set on fire.

2. That on the *twentieth* day of *July, 1894*, at *P.*, the defendant published in a newspaper called the *News*, the following words concerning the plaintiff: "*One A. B. kindled the fire, and I can prove it.*"

3. That the defendant meant thereby that the plaintiff had feloniously set fire to said house.

4. That the said publication was false and defamatory.

5. That plaintiff hath sustained damage by reason of said false and defamatory publication in the sum of \$2250.

[Demand of judgment.]

**No. 834.—Complaint—Composing a Libel not Directly Accusing the Plaintiff.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That before the committing of the grievances by the defendant hereinafter mentioned, a certain action had been pending in the Superior Court of the County of *Humboldt*, State of *California*, wherein one *A. B.* was plaintiff, and one *C. D.* was defendant, and which action had been then lately tried in said Court, and on such trial the plaintiff herein was examined on oath, and had given his evidence as a witness in behalf of the said *A. B.*

2. That on the *twenty-second* day of *July, 1894*, at *P.*, the defendant published in a newspaper called the *News*, the following words concerning the plaintiff and the said action, and concerning the evidence given by the said plaintiff upon the said trial as such witness; that is to say: "*He [meaning the plaintiff] was sworn on the trial [meaning the said trial], and that he, the said plaintiff, in giving his evidence as such witness on said trial had committed willful and corrupt perjury.*"

3. That said publication was and is false and defamatory.

4. That by reason of said false and defamatory publication the plaintiff hath been damaged in the sum of \$2750.  
[Demand of judgment.]

### No. 835.—Complaint—Words Spoken in a Foreign Language.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *twenty-fourth* day of *July, 1894*, at *P.*, the defendant in the presence and hearing of divers persons who understood the *German* language, spoke concerning the plaintiff the following words in the said *German* language [*here set forth the words in the German or foreign language*]; and which said words signified, and were understood to mean in the *English* language [*here set forth a correct translation of the words in English*]; and the said *German* words were so understood by the said persons in whose presence and hearing they were spoken.

2. That the defendant meant thereby [*set forth innuendo*].

3. That the said publication was false and defamatory.

4. That in consequence [*state special damage*].

5. That by reason of the speaking and publication of the said false and defamatory words the plaintiff hath been injured in his reputation, to his damage \$2990. [*If special injury as to business is alleged, add, after the word "reputation," the words "and business."*]

[Demand of judgment.]

### No. 836.—Complaint—For Malicious Arrest.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *first* day of *August, 1894*, the defendant, maliciously intending to injure the plaintiff, made affidavit, and procured one *A. B.* to make an affidavit, in an action brought against this plaintiff by defendant, in which he alleged [*set forth the grounds of the false arrest*]; and that upon said affidavits the defendant caused to be issued an order of arrest against this plaintiff, under which the plaintiff was arrested and imprisoned for the space of *twenty days*, and compelled to give bail in the sum of \$1000.

2. That in so doing the defendant acted maliciously and without probable cause.

3. That on the *fifteenth* day of *August, 1894*, said order was vacated by said Court, upon the ground that [*set forth the grounds upon which it was vacated*].

[Or, 3. That on the *twenty-fifth* day of *August, 1894*, such proceedings were had in such action, that it was finally determined in favor of this plaintiff, and judgment was rendered for him therein.]

4. [*Special damage.*] That many persons, whose names are unknown to plaintiff, hearing of the arrest, *etc.*, to the damage to the plaintiff \$2750.

[*Demand of judgment.*]

**No. 837.—Complaint—Against Common Carriers—For Injuries.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *third* day of *August*, 1894, the defendant was a common carrier of passengers for hire by stage-coach between *M.* and *N.*

2. That on that day, as such carrier, he received the plaintiff upon his coach to be carried from *M.* to *N.*, for the sum of \$500, which was then and there paid by the plaintiff to the defendant.

3. That while he was such passenger at *N.* [*or near N., or between M. and N.*], the said coach was, by and through the carelessness and negligence of the said defendant, overturned and thrown down, with the plaintiff therein, as aforesaid, by means whereof the said plaintiff was greatly injured, and one of the legs of said plaintiff was broken, and fractured, and bruised, and the said plaintiff was otherwise greatly injured, wounded, and cut, insomuch that the said plaintiff then became sick, lame, and sore, and so continued for the space of *two* months thence next ensuing, and was during all that time prevented from attending to his business and carrying on the same, and the said plaintiff was forced to expend, and did expend, the sum of \$1000 for medical attendance and nursing, to his damage \$1500.

[*Demand of judgment.*]

**No. 838.—Complaint—Injuries by Collision.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *fourth* day of *August*, 1894, the defendant was a corporation duly incorporated under the laws of this State, and was the owner of a certain railroad, known as the *Stockton and Fresno Railroad*, together with the track, rolling stock, and other appurtenances thereto belonging; and was a common carrier of passengers thereupon for hire, between *Stockton* and *Fresno*, in the State of *California*.

2. That on that day the defendant, in consideration of the sum of \$25, then paid to it by the plaintiff therefor, undertook and agreed, as such common carrier, to transport and convey the plaintiff from *Stockton* to *Fresno*, as a passenger, and the plaintiff thereupon entered one of the cars of the defendant to be so conveyed as aforesaid from *Stockton* to *Fresno* aforesaid.

3. That while he was such passenger, at *L.* [*or near the station of L., or between the stations of L. and M.*], a collision occurred



on the said railroad caused by the negligence of the defendant and its servants, whereby the plaintiff was much injured [*state the injury according to fact, and the special damage, if any*].

[Or, 3. That the defendant and its servants, in managing said cars in which plaintiff was a passenger, were so careless and negligent that it was unsafe for him to remain in one of them; and that in order to free himself from the danger, he was obliged to leap from the car, and in doing so was injured] [*state injury according to the fact*].

4. By means whereof the plaintiff hath been damaged in the sum of \$2990.

[*Demand of judgment.*]

**No. 839.—Complaint—Injuries to Engineer of a Railroad Company.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *eighth* day of *August*, 1894, the defendant was a corporation, duly incorporated under and pursuant to the laws of the State of *California*, and was the owner of a certain railroad, and of a locomotive propelled by steam on said railroad, and by said defendant used and employed in carrying and conveying passengers and goods [*or hauling trains of cars containing passengers and goods*], upon and over the said railroad of the said defendant, from *L.* to *F.*

2. That the said plaintiff on the day and year aforesaid, at *L.* aforesaid, and at the time of the committing of said grievances, was in the employ of the said defendant, as engineer upon said locomotive, so moved and propelled by steam as aforesaid, and that it then and there became, and was the duty of the said defendant to procure a good, safe, and secure locomotive, with good, safe, and secure machinery and apparatus, to move and propel the same as aforesaid.

3. That the said defendant conducted itself so carelessly, negligently, and unskillfully, that by and through the carelessness, negligence, and default of the said defendant and its servants, it provided, used, and suffered to be used, an unsafe, defective, and insufficient locomotive, of all of which it had notice.

4. That for want of due care and attention to its duty in that behalf, on the said *eighth* day of *August*, 1894, at *L.*, aforesaid, and while the said locomotive was in the use and service of said defendant, upon said railroad, and whilst the said plaintiff was on the same, in the capacity aforesaid, for the said defendant, the boiler connected with the engine of the said locomotive, by reason of the unsafeness, defectiveness, and insecurity thereof, exploded, whereby large quantities of steam and water escaped therefrom, and fell upon the said plaintiff, by which he was greatly scalded, burnt, and wounded, and became sick, sore, and disordered, and

so remained for the space of one month, and was compelled to expend the sum of \$1500 for medical attendance, and was prevented from attending to his ordinary business, and lost all the wages he otherwise would have earned, to wit: the sum of \$1000, to his damage \$2500.

[Demand of judgment.]

**No. 840.—Complaint—By Executor against a Railroad Company.**

[TITLE OF COURT AND CAUSE.]

The plaintiff, as the executor [or administrator] of the estate of *A. B.*, deceased, complains, and alleges:

1. That on the *ninth* day of *August, 1894*, the defendant was a corporation, duly organized by [or under] the laws of this State, and was a common carrier of passengers, for hire, by railroad, between *M.* and *N.*

2. That on that day said defendant received one *A. B.* into its cars, for the purpose of conveying him therein as a passenger from *M.* to *N.* for \$500 paid to them by said *A. B.*

3. That while he was such passenger, at *L.*, a station on the line of the said railroad, by and through the carelessness of the defendant and its servants, a collision occurred by which the cars of said railroad were thrown from the track, and the car in which the said *A. B.* then was was precipitated down an embankment, and the said *A. B.* was thereby killed; [or as the case may be].

4. That on the *twenty-seventh* day of *August, 1894*, letters of administration upon the estate of the said *A. B.* were duly issued by the Probate Court of the County of *Sierra* to the plaintiff, by which he was appointed administrator of all the goods and credits belonging to the said *A. B.* at the time of his death, and he thereupon was qualified and entered upon his duties of such administration.

5. That by reason of the premises the plaintiff, as such executor [or administrator], hath sustained damage in the sum of \$2990.

[Demand of judgment.]

**No. 841.—Complaint—Against a Municipal Corporation—Street in an Insecure State.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That the defendant is a municipal corporation, duly organized under the laws of this State.

2. That among other things, it is, by its charter, made its duty to keep the streets in said city in good order, and at all times properly to protect any excavations made in said streets, by placing lights and signals thereat to indicate danger.

3. That a certain street in said city, known as *C street*, was, and is a common thoroughfare, and used by the citizens thereof and others, and that the duty of said defendant as to said street was, and became at the time hereinafter mentioned, a matter of public and general concern.

4. That on or about the *fourth* day of *August, 1894*, a deep and dangerous excavation [*hole or trench*] was dug in said street [*or an obstruction was placed in said street, and negligently left therein*], and suffered by the defendant, during a night on or about said day, to remain open, exposed, and without proper protection, and without any light or signal to indicate danger.

5. That the plaintiff, on the night aforesaid, was lawfully traveling on said street, and was wholly unaware of danger, and was accidentally, and without fault or negligence on his part, precipitated into said excavation [*hole or trench*], whereby he received great bodily injury, and was made sick and sore, and was thereby kept to his bed, and detained from business for *twenty* days, and was in consequence thereof compelled to expend \$750 for medical attendance and nursing, and has been made permanently lame, to his damage \$2750.

[*Demand of judgment.*]

#### **No. 842.—Complaint—Injuries Caused by Vicious Dog.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *fourteenth* day of *August, 1894*, at *P.*, the defendant was the keeper [*or owner*] of a certain vicious dog, which was accustomed to bite mankind.

2. That the said defendant, well knowing the premises, did wrongfully and injuriously keep and harbor the said vicious dog, and wrongfully and negligently suffered such dog to go at large, without being properly guarded or confined.

3. That while so kept as aforesaid, the said dog did bite and greatly wound this plaintiff [*state the particulars*], whereby this plaintiff became sick, and sore, and lame, and so continued for the space of *six months* thence next following, and was obliged to pay, and did expend, \$1000 for medical attendance consequent thereon, and was prevented during all said months of sickness from attending to his lawful affairs, to his damage \$2500.

[*Demand of judgment.*]

#### **No. 843.—Complaint—Enticing Away Plaintiff's Wife.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That *A. B.* is, and at the time hereinafter mentioned was, the wife of the plaintiff.

2. That on or about the *nineteenth* day of *August, 1894*, while the plaintiff was living and cohabiting with and supporting her,



at P., and while they were living together happily as man and wife, the defendant, wrongfully contriving and intending to injure the plaintiff, and to deprive him of her comfort, society, and assistance, maliciously enticed her away from the plaintiff's and her then residence in P., to a separate residence in Q., and has ever since there detained and harbored her, against the consent of the plaintiff.

3. That by reason of the premises the plaintiff has been, and still is, wrongfully deprived by the defendant of the comfort, society, and aid of his said wife, and has suffered great distress of body and mind in consequence thereof, to his damage \$9300.

[Demand of judgment.]

### No. 844.—Complaint—Against Telegraph Company.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That the defendant is a corporation organized and doing business under the laws of this State, and is, and at all times hereinafter mentioned, was engaged in the business of telegraphing for hire.

2. That on the *eighteenth* day of *January, 1894*, the plaintiff presented to the defendant, at its office in M., the following message, to wit:

*"John Doe, San Francisco. Buy one hundred tons of wheat. James Roe [the plaintiff]."*

Which message defendant received and promised to forward, by telegraph, to said *John Doe*, in *San Francisco*. That in consideration thereof the plaintiff paid the defendant \$20.

3. That on account of the negligence of the defendant said message was not transmitted as written by plaintiff, but was sent and delivered to said *John Doe* so as to read as follows:

*"John Doe, San Francisco. Buy five hundred tons of wheat. James Roe."*

4. That said *John Doe*, in pursuance of said message so delivered to him, bought five hundred tons of wheat for the account of the plaintiff; that immediately on learning the error in said telegram, plaintiff notified the defendant of the same, and that through said error four hundred tons of wheat had been bought more than was directed to be bought by the original message written by the plaintiff, and plaintiff asked instructions from defendant relative to the disposition of said four hundred tons. The defendant refused to take any notice thereof, or give any instructions concerning said wheat, and the plaintiff thereupon sold the same at *San Francisco*, on the *thirtieth* day of *January, 1894*, at the highest market rate.

5. That the price paid by said plaintiff for said wheat was \$5000, and plaintiff was compelled to pay the further sum of \$100, commissions on said purchase; that plaintiff sold said wheat for \$4000, and was compelled to pay \$75 commissions on said sale.

[Demand of judgment.]

**No. 845.—Complaint—For Loss of Pledge.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *fourth* day of *January*, 1894, at *P.*, the plaintiff delivered to the defendant [*describe articles*], the property of this plaintiff, of the value of \$2000, by way of pledge to defendant, to secure the sum of \$1750, theretofore loaned by the defendant to the plaintiff, which articles the defendant received for that purpose, and agreed with the plaintiff to take good care of the same until they should be redeemed by the plaintiff.

2. That the defendant has failed to fulfill said agreement on his part; and, on the contrary, so negligently and carelessly kept said articles, that while they were in his possession for the purposes aforesaid, they were, through his negligence, lost, to the damage of the plaintiff \$2000.

[Demand of judgment.]

**No. 846.—Complaint—Driving Horse on a Different Journey.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *twenty-fourth* day of *January*, 1894, at *P.*, the defendant hired and received from the plaintiff a horse and carriage, of the value of \$350, the property of the plaintiff, to drive from *M.* to *N.*, and not elsewhere.

2. That the defendant, in violation of the agreement, performed a different journey than that aforesaid, and drove said horse and carriage from *M.* to *O.*

3. That he did not take proper care of said horse and carriage, but so negligently drove and managed the same that the carriage was broken, to the damage of plaintiff \$375.

[Demand of judgment.]

**No. 847.—Complaint—Against Warehouseman for Injury to Goods.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *tenth* day of *January*, 1894, at *P.*, the defendant, in consideration of the sum of \$250, then and there paid to him by plaintiff, agreed to store and keep safely in his warehouse at *P.*, the following goods, the property of the plaintiff, of the value of \$2500, consisting of [*here designate goods*], for the term of *four weeks* from said date, and then safely to deliver said goods to plaintiff at his request, and then and there received said goods for such purpose.

2. That at the time of the delivery of said goods to defendant the plaintiff informed him that it was necessary to the preservation of said goods that they should be handled with care.

3. That the defendant negligently allowed the same to be handled without care, and roughly moved and broken, so that the same, through the negligence of the defendant and his servants, became entirely ruined, to the damage of the plaintiff \$2500.

[Demand of judgment.]

**No. 848.—Complaint—Carelessly Selling to an Insolvent.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *nineteenth* day of *January*, 1894, at *M.*, the defendant undertook with the plaintiff, as his agent, and for the compensation to be paid by him, to sell for him goods of the plaintiff, to wit: [*designate goods*], of the value of \$1750, and thereupon received the same from him for that purpose.

2. That the defendant did not use due diligence to sell, or in selling the same, but negligently sold the said goods for the plaintiff to a person in embarrassed circumstances, then well knowing said person's financial embarrassments, without receiving the price therefor, or taking security for the payment thereof; whereby the plaintiff has hitherto lost, and is likely wholly to lose, the price, to plaintiff's damage \$1750.

[Demand of judgment.]

**No. 849.—Complaint—Against an Attorney for Negligence.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That the defendant is, and at the times hereinafter mentioned was, an attorney of the Supreme Court of this State; that the plaintiff, on or about the month of *January*, 1894, retained and employed him as such attorney, to prosecute and conduct an action in the Superior Court of the County of *Yuba*, State aforesaid, on behalf of this plaintiff, against one *A. B.*, for the recovery of \$1500, due from him to this plaintiff, and the defendant undertook to prosecute said action in a proper, skillful, and diligent manner, as the attorney of the plaintiff.

2. That the defendant might, in case he had prosecuted said action with due diligence and skill, have obtained final judgment therein for this plaintiff before the *twenty-fifth* day of *March*, 1894; but he so negligently and unskillfully conducted said action, that by his negligence, delay, and want of skill, he did not obtain judgment until the *twentieth* day of *May*, 1894, and that meanwhile said *A. B.* had become insolvent; whereby the plaintiff was hindered and deprived of the means of recovering said sum of money, and that the same has not, nor has any part thereof, been recovered or made by plaintiff, to his damage \$1500.

[Demand of judgment.]



**No. 850.—Complaint—Against a Contractor—Street in an Insecure State.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That at the time hereinafter mentioned, the defendant had contracted with one *A. B.* to lay down pipes in and under the highway known as *C* street, in *P.*, for the purpose of supplying the said *A. B.* with gas, and to make the proper trenches for the purpose; and when such pipes were laid down to fill up properly the said trenches, and to put and leave the said highway clear and in a reasonably secure condition.

2. That the defendant and his servants, on the *twenty-fifth* day of *January*, 1894, took up part of the said highway, and made trenches and holes therein, and laid down said pipes, and displaced the earth and material of said highway, and carelessly and negligently left the said highway in a dangerous and improper state, in consequence whereof a horse of the plaintiff, of the value of \$1500, which he was then and there lawfully driving along the said highway, fell into and sunk therein, and was wounded, and lamed, and rendered of no value, to plaintiff's damage \$1500.

[Demand of judgment.]

**No. 851.—Complaint—Against Water Company—Escape of Water.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *fourteenth* day of *February*, 1894, the plaintiff was in the possession and occupancy of that certain building situate on *L* street, in the *City and County of San Francisco*, known as *No. 15*, and was engaged in carrying on therein a general merchandise business, and owned and had stored therein large quantities of goods, to wit: groceries of the value of \$10,000.

2. That the defendant is, and at all times herein mentioned was, a corporation duly incorporated and existing under the laws of the State of *California*, and that the business of said corporation has been, and is, to supply the inhabitants of said *city and county* with fresh water, which water was and is supplied through iron pipes heretofore laid by the defendant through the principal streets of said *city and county*, and that said pipes were and are owned and controlled by the defendant.

3. That at all times herein mentioned a water pipe or main was laid on said *L* street, through which water was then flowing in great quantity, and with great velocity, and under great pressure, and that said pipe was then owned and controlled by the defendant, and was used by it in conducting and distributing water to the inhabitants of said *city and county*.

4. That on said last mentioned day defendant, by its agents and servants, was engaged in repairing said water pipe or main,

situate as aforesaid, on *L street*, while the water was flowing through said main, but in so doing did not use proper or any care therein, as it could and should have done, by shutting off the flow of water through said main during the process of making said repairs; but, on the contrary, said defendant, and its agents and servants, were guilty of gross negligence and carelessness in endeavoring to make said repairs while the water continued to flow through said principal main, and thereby a large quantity of water was permitted to escape, and did escape, from said main with great force and velocity, and under great pressure, and that by reason thereof said water ascended to a great height, to wit: to the height of *forty* feet and upwards, and fell upon the roof of the building occupied by the plaintiff, and descended into the floors below, and flowed over, upon, and around goods which this plaintiff then owned and had there stored, and completely destroyed and rendered valueless large quantities of the same, which were then of great value, to wit: of the value of \$1000, to the great injury and damage of this plaintiff, in the sum of \$1000.

[Demand of judgment.]

**No. 852.—Complaint—Trespassing Cattle, under Statute.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains and alleges:

1. That during all the times hereinafter mentioned he was, and now is, the owner and lawfully in possession of all that certain real estate situated in *K. Township, County of Sierra, State of California*, and described as follows:

[Description.]

2. That during all of the time between the *fourteenth* day of *February, 1894*, and the *third* day of *March, 1894*, the defendant was the owner, in possession of, and chargeable with the care of certain animals, to wit: *sheep*.

3. That at divers times between said last mentioned dates said animals ran and trespassed upon said lands, ate up, injured, and destroyed the grain, hay, and verdure being and growing thereon.

4. That in consequence of said animals so running, trespassing, eating up, injuring, and destroying the said grain, hay, and verdure, which was then upon said land, plaintiff has been damaged in the sum of \$250.

[Demand of judgment.]

**No. 853.—Complaint—Conversion—Personal Property.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *seventeenth* day of *January, 1893*, the plaintiff as lawfully possessed of [*briefly describe the goods*], his property, the value of \$800.

2. That on the said day, at *P.*, the defendant unlawfully took and carried away said goods and converted and disposed of the same to his own use, to the damage of the plaintiff \$800.

[*Demand of judgment.*]

**No. 854.—Complaint—Erecting a Nuisance.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That he is, and at all the times hereinafter mentioned was, the owner and possessed of the house and lot No. 10, *L street, P.*

2. That the defendant was also then and there the owner and possessed of certain other premises contiguous to [or in the vicinity of] plaintiff's said premises.

3. That the defendant, on or about the *twenty-eighth* day of *February, 1894*, erected on his said premises a *slaughter-house and cattle-pens, and furnaces and vats for making lard and tallow*, and thereafter kept in his said pens, and slaughtered in his said slaughter-house, large numbers of cattle and hogs, and made thereat tallow and lard, and thereby and by means of said several acts and things caused noxious and offensive smells, and loud and offensive noises, and tainted and corrupted the atmosphere so as to render the dwelling-house and premises of the plaintiff unfit for habitation, and compelled plaintiff to remove from and abandon the same, and thereby also prevent him from renting or otherwise receiving any income therefrom [*if other special damage accrued, state it*], to the damage of the plaintiff \$200.

[*Demand of judgment.*]

**No. 855.—Complaint—By Purchaser at Sheriff's Sale—For Waste.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *tenth* day of *March, 1894*, one *A. B.* was the owner in fee of the following described premises [*description of premises*].

2. That the said premises were at the time subject to the lien of a judgment recovered by one *C. D.* against *E. F.*, in an action in the Superior Court of the County of *Fresno*, in this State, which judgment was docketed in said county [or *state the county*], and that the Sheriff of said county, by virtue of an execution issued thereon, sold the same.

3. That at such sale the plaintiff became a purchaser, and the Sheriff executed and delivered to him a certificate of the said sale, and on the *twenty-sixth* day of *March, 1894*, and before this action, executed and delivered to plaintiff a deed of the premises pursuant to the said sale thereof, and the plaintiff paid the purchase money therefor.



4. That intermediate the sale and delivery of the deed, the defendant being in possession [*allege act of waste and damage, against form of the statute*].

[*Demand of judgment.*]

**No. 856.—Complaint—Justice's Judgment.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *thirteenth* day of *March, 1894*, at *P.*, before *J. P.*, a Justice of the Peace in and for the Town of *P.*, County of *Butte*, in this State, the plaintiff recovered a judgment, which was duly given by said Justice against the defendant for *\$150* damages and *\$30* costs, in an action wherein this plaintiff was plaintiff, and the defendant herein was defendant.

2. That on the *thirtieth* day of *March, 1894*, a transcript of the same was filed and docketed in the office of the Clerk of the County of *Butte*, in this State, in which county the defendant then resided.

3. That on the *fifteenth* day of *April, 1894*, an execution was duly issued upon the said judgment against the property of the defendant, and addressed to the Sheriff of said *Butte* County.

[*Continue as in complaint on judgment of Superior Court.*]

**No. 857.—Complaint—Fraudulently Procuring Credit.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *twenty-second* day of *March, 1894*, at *P.*, the defendant represented to the plaintiff that one *C. D.* was solvent and in good credit, and worth *\$2750* over all his liabilities.

2. That the plaintiff was thereby induced to sell to the said *C. D.* [*state articles sold*] of the value of *\$2250*, on three months' credit.

3. That the said representations were false in this, that the said *C. D.* was not then and there solvent and in good credit, and worth *\$2750* over all his liabilities; but, on the contrary thereof, the said *C. D.* was then and there insolvent and not in good credit, all of which was well known to the defendant, and said representations were made by him with intent to deceive and defraud the plaintiff [*or to deceive and injure the plaintiff*].

4. That the said *C. D.* did not pay for the said goods at the expiration of the credit aforesaid [*or has not paid for the said goods, and the plaintiff has wholly lost the same by reason of the premises*].

[*Demand of judgment.*]

**No. 858.—Complaint—Against Directors of a Corporation.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That before the time hereinafter mentioned, at *P.*, a corporation was formed, or pretended to be formed, for the purpose of insuring property against losses by fire, and for other purposes; which corporation was named the *M. N. Insurance Company*.

2. That the said company was organized, or pretended to be organized, under the provisions of a law of this State, passed [*date of Act*], entitled "*An Act,*" *etc.*

3. That the charter of said company provided, among other things, that the capital thereof should be \$50,000, to be paid up in cash.

4. That at the times hereinafter mentioned, the defendants were [*or represented themselves to be*] directors of said company.

5. That at sundry times between the *twenty-fourth* day of *March, 1894*, and the *fifth* day of *August, 1894*, the defendants represented to the public at large [*or to the plaintiff*] that the said company had a paid-up cash capital of \$50,000.

6. That on the *tenth* day of *August, 1894*, at *P.*, the defendants published a statement, showing that the profits of the said company amounted to \$2500, and declared a dividend of *five per centum*.

7. That the said representations were wholly false, and were then known by the defendants to be so, and were made with intent to deceive and defraud the public, and to induce persons to insure with the said company. That the said company never had a cash capital of more than \$25,000, and had not on the said *tenth* day of *August, 1894*, more than \$750 profits.

8. That by the said representations the plaintiff was induced to insure with the said company, which accordingly issued to him a policy of insurance, of which a copy is hereto annexed, marked "*Exhibit A.*"

9. That on the *fifteenth* day of *August, 1894*, the property mentioned in the said policy was destroyed or greatly injured by fire, and the plaintiff's loss thereon amounted to \$2350.

10. That on the *seventeenth* day of *September, 1894*, at *P.*, the plaintiff obtained judgment against said company upon the said policy, for \$1500, in the Superior Court of the County of *Alameda*.

[*State damages.*]

[*Demand of judgment.*]

**No. 859.—Complaint—State and County Tax—Known Owners.**

[TITLE OF COURT AND CAUSE.]

The plaintiff, by *A. B.*, District Attorney of the *City and County of San Francisco*, complains of *James Jones, John Doe, and Richard Roe*:

1. That between the *sixth* day of *January*, 1894, and the *sixth* day of *June*, 1894, *A. B.*, in the *City and County of San Francisco*, in the *State of California*, then and there being County Assessor of said county, did duly assess and set down upon an assessment roll all the property, real and personal, in said county, subject to taxation; that said assessment roll was afterwards submitted to the Board of Equalization of said county, and was by said Board duly equalized, as provided by law; that the said *James Jones* was then and there the owner of, and that there was duly assessed to him, the following described real estate, improvements upon real estate, certain personal property [*state kinds*], and also certain dogs, to wit:

*Said real estate, valued and so assessed at.....*\$5,000  
*Said improvements, valued and so assessed at.....* 500  
*Said personal property, valued and so assessed at..* 250

2. That each of the other persons, defendants herein, have and claim a title to, and an interest in, said real estate, improvements on real estate, and personal property, and are liable for, and in duty bound to pay, the taxes herein specified; that upon said property there has been duly levied for the fiscal year 1894:

*A State tax of.....*\$15  
*A County tax of.....* 40  
*Amounting in the whole to.....* 55

*All of which is due and unpaid, of which amount \$40 was duly assessed and levied against the real estate aforesaid, and \$15 against the improvements aforesaid.*

Wherefore, said plaintiffs pray judgment against said persons, defendants herein, for the sum of \$55, and that said taxes, and all costs subsequent to the assessment of said tax, and all costs and expenses of this suit, be paid in *gold and silver coin* of the United States, and plaintiffs pray for such other judgment as to justice belongs.

## No. 860.—Complaint—Undertaking—Discharge of an Attachment.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That on the *twenty-third* day of *June*, 1894, an attachment against the property of *C. D.* was issued out of the Superior Court of said county, in an action commenced by *A. B.*, the plaintiff herein, against said *C. D.*, the defendant herein, to recover [*state what*].

2. That afterwards, on the *twenty-ninth* day of *June*, 1894, at *P.*, the said *C. D.* appeared in said action, and applied for a discharge of said attachment, and that the defendants herein, *E. F.* and *G. H.*, thereupon executed and delivered to this plaintiff a



written undertaking, pursuant to law, a copy of which is hereto annexed and made a part of this complaint, marked "*Exhibit A.*"

3. That upon delivery of said undertaking the said attachment was discharged and the property was released, and that subsequently, on the *tenth* day of *July, 1894*, said plaintiff recovered judgment against the said *C. D.*, which was rendered in said action for \$500, damages and costs, which judgment was entered and docketed in the office of the Clerk of said Court, on the *twentieth* day of *July, 1894*, and that said judgment has not been paid.

4. That on the *twenty-fifth* day of *July, 1894*, this plaintiff demanded of the defendants herein payment of said judgment, which was by each and all of them refused.

5. That they have not paid the same, nor any part thereof.

[*Demand of judgment.*]

[*Annex copy of undertaking, marked "Exhibit A."*]

### No. 861.—Complaint—On an Undertaking—Claim and Delivery.

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That heretofore this plaintiff commenced an action in the Superior Court of *San Mateo* County, against *A. B.*, to recover possession of specific personal property.

2. That in the course of said action such proceedings of claim and delivery, under and pursuant to the statute, were had, that on the *twenty-fourth* day of *June, 1894*, the defendants made and delivered to the Constable serving said writ, for the use of this plaintiff, pursuant to the statute, their written undertaking, of which the following is a copy: [*Copy of the undertaking*].

3. That the personal property referred to in said undertaking was delivered [*or released*] to the said *A. B.*, defendant in said action, pursuant to said undertaking, and to a requisition of said *A. B.*, defendant in said action, made pursuant to law, and said undertaking was thereupon delivered to this plaintiff.

4. That such proceedings were afterwards had, that, on the *seventeenth* day of *July, 1894*, a decision in the said Court was rendered against the said *A. B.*, wherein the value of the said property was found to be \$2750, whereupon judgment was rendered against *A. B.*, the defendant therein, that the plaintiff recover possession of said property, or the sum of \$2750, in case a delivery could not be had.

5. That the defendant has not returned said property, nor otherwise paid or satisfied said judgment.

6. [*State demand, where that is necessary.*]

7. That this plaintiff thereafter caused execution to be issued on said judgment against the said defendant, *A. B.*, which execution has been returned wholly unsatisfied.

8. That the defendant has not paid said judgment, nor any part thereof.

[Demand of judgment.]

**No. 862.—Complaint—On an Official Bond.**

[TITLE OF COURT AND CAUSE.]

The plaintiff complains, and alleges:

1. That the defendant, on the *twenty-ninth* day of *June*, 1894, at *P.*, made and delivered his bond, or writing obligatory, sealed with his seal, of which the following is a copy: [*Copy bond*].

[Set forth breach.]

[Demand of judgment.]

**No. 863.—Confession of Judgment.**

IN THE SUPERIOR COURT of the County of *Butte*, State of *California*.

In the Matter of a  
Judgment by Confession. }  
*Richard Roe*  
to  
*John Doe*.

I, *Richard Roe*, of *Oroville*, County of *Butte*, State of *California*, do hereby confess judgment herein in favor of *John Doe*, of *Quincy*, County of *Plumas*, State of *California*, for the sum of *six hundred and fifty* dollars, gold coin of the United States, and authorize judgment to be entered therefor against me, with legal interest thereon from this date.

This confession of judgment is for a debt justly due and owing to the said *John Doe*, arising upon the following facts, to wit:

At various times between the *twentieth* day of *September*, 1890, and the *fifteenth* day of *September*, 1894, I received for the use and benefit of the said *John Doe*, and from one *James Smith*, divers sums of money, gold coin of the United States, amounting in the aggregate to said sum of *six hundred and fifty* dollars, no part of which has ever been paid to said *John Doe*, and it is now due.

(Dated and signed.)

STATE OF *California*, }  
County of *Butte*. } ss.

*Richard Roe*, being duly sworn, says that he is the person who signed the above statement, and that he is indebted to the said *John Doe* in the sum of *six hundred and fifty* dollars, gold coin of the United States, in said statement mentioned; that there are no off-sets to the same, and that the facts stated in the above confession and statement are true.

(Subscribed and sworn to.)

NOTE 1.—In California a judgment by confession may be entered without action either for money due or to become due, or to secure any person against contingent lia-

bility on behalf of the defendant, or both, in the manner prescribed by this chapter. Such judgment may be entered in any Court having jurisdiction for like amounts.

A statement in writing must be made, signed by the defendant, and verified by his oath, to the following effect:

1. It must authorize the entry of judgment for a specified sum;
2. If it be for money due, or to become due, it must state concisely the facts out of which it arose, and show that the sum confessed therefor is justly due, or to become due;
3. If it be for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability, and show that the sum confessed therefor does not exceed the same. C. C. P., secs. 1132-33.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 3381.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5060.

NOTE 4.—In Montana the same. C. C. P., secs. 2040-43.

NOTE 5.—In Utah the same. Comp. Laws, sec. 3764.

NOTE 6.—In North and South Dakotas the same. Comp. Laws, sec. 5537.

NOTE 7.—In Wyoming before action brought to recover money, a person (debtor) may go into the Court of the county of his residence, or of that of the person having the cause of action, and offer to confess judgment in favor of such person for a specified sum on said cause of action; whereupon, if such person, having notice that the offer would be made, and of the amount, and the time and place of making it (as to the Court seems reasonable), fails to attend to accept the confession; or if he attends and fails to accept it; or if he attends and refuses to accept, and if in an action thereafter commenced fails to recover more, he must pay costs to the defendant, and cannot recover interest from the date of the offer. Rev. Stats., sec. 2526.

NOTE 8.—In Washington the same as in California. Hill's Stats., sec. 419.

NOTE 9.—In Oregon any person capable of being a defendant in an action may confess judgment in favor of any one for money due or to become due, or to secure against a contingent liability. The judgment is made the same as in a pending action; and besides the confession shall be verified by the oath of the party making it, and shall be for a specified sum. If for money due, or to become due, it must state the facts upon which the indebtedness arose, and shall show that the sum due is justly due, or to become due. If the liability is contingent, the facts shall all be stated. Hill's Laws, pp. 335-36, secs. 255-56.

NOTE 10.—In Arizona any person indebted, or against whom a cause of action exists, may appear without process, in person or by attorney, and confess judgment therefor in open Court; but in such case the justice of the debt or cause of action must be sworn to by the person in whose favor the judgment is confessed. Rev. Stats., sec. 502.

NOTE 11.—In Colorado the parties make up a case in their pleadings and submit the agreed case. C. P., sec. 278.

### No. 864.—Decree of Divorce.

IN THE SUPERIOR COURT of the County of *Sacramento*, State of *California*.

Present: Hon. *Samuel C. Dennison*, Judge.

<i>Jane Doe,</i>	}
Plaintiff,	
v.	
<i>John Doe,</i>	
Defendant.	

This cause coming on to be heard this *twenty-second* day of *January*, 1894, upon the complaint herein taken, as confessed by the defendant (whose default for not answering had been duly entered), upon the proofs taken herein, and upon the report of *James Adams*, referee in this cause, to whom it was referred by order of this Court duly made the *tenth* day of *January*, 1894, to take the proofs of the facts set forth in the complaint, and to report the same to the Court, and the said referee having taken the testimony by written questions and answers, and reported the same to this Court, on the *eighteenth* day of *January*,



1894, from which it appears that all the material allegations of the complaint are sustained by testimony free from all legal exceptions as to its competency, admissibility, and sufficiency, and it also appearing to said Court that said defendant was duly served with the summons, and all and singular the law and the premises being by the Court here understood and fully considered;

Wherefore, it is here ordered, adjudged, and decreed, and this does order, adjudge, and decree, that the marriage between the said plaintiff, *Jane Doe*, and the said defendant, *John Doe*, be dissolved, and the same is hereby dissolved, and the said parties are, and each of them is, freed and absolutely released from the bonds of matrimony, and all the obligations thereof.

And it is further ordered and decreed that the custody of the children of said marriage, to wit: *Hannah Doe*, aged 16 years, and *Richard Doe*, aged 7 years, be, and the same is hereby awarded to the plaintiff.

Done in open Court, etc.

NOTE.—California Civil Code, secs. 146, 147. C. C. P., sec. 632.

### No. 865.—Decree—Sole Trader.

IN THE SUPERIOR COURT of the City and County of San Francisco, State of California.

In the Matter of the Application of }  
*Amelia Jones* }  
 For the Privileges of Sole Trader. }

The application of *Amelia Jones*, wife of *Thomas Jones*, coming on regularly to be heard this third day of November, 1894, and proof having been first made to the satisfaction of the Court that notice in due form and substance of petitioner's intention to make this application had been duly published in the *Daily Examiner*, a newspaper published and circulated in the City and County of San Francisco, for four successive weeks, and no creditor of said petitioner's husband having filed any written opposition to her application or appeared to oppose the same;

The Court proceeded to hear the allegations of said applicant's petition, duly filed and verified; and said applicant appearing in person in open Court, and having been duly examined by said Court under oath, as required by law, and after hearing said applicant's proofs, it duly appearing to the satisfaction of the Court that a proper case exists for granting the order, and that said applicant had been a *bona fide* resident of said county for six months and upwards next preceding her application herein, thereupon said applicant did make and file with the Clerk of this Court the oath required by law, and the Court now here finds the following facts from the proofs, and in accordance therewith:

1. That the application is made in good faith, to enable said

applicant to support herself and her *five* children, dependent upon her, viz.: *Alfred Jones*, aged *fourteen* years; *Walter Jones*, aged *twelve* years; *Frederick Jones*, aged *ten* years; *Amelia Jones*, aged *eight* years, and *Ernest Jones*, aged *five* years.

2. That the reason of insufficient support from her said husband is, *he is out of health and unable to work at his trade a major portion of the time.*

3. *That applicant has no legal grounds for divorce.*

4. That the money to be invested in said business *is obtained and loaned from a friend of petitioner.*

Now, therefore, by virtue of the law and the premises, it is ordered, adjudged, and decreed, that she, the said *Amelia Jones*, be, and is hereby authorized and empowered to carry on in her own name, and on her own account as a sole trader, the business specified in said notice and petition, as follows, to wit: *That of buying and selling goods, wares, and merchandise, and keeping a general variety store in said City and County of San Francisco.*

NOTE.—See No. 546 and notes.

### No. 866.—Decree of Foreclosure.

[TITLE OF COURT AND CAUSE.]

This cause came on regularly to be heard in open Court on this first day of *July 1894*, *John H. Smyth* appearing for *plaintiff*, and the defendant not appearing.

The Court having heard all the evidence and proofs produced herein, and duly considered the same, and being fully advised in the premises, and it appearing therefrom to the satisfaction of the Court:

First. That *George Brown*, the above named defendant, has been duly and regularly summoned to answer unto the *plaintiff's* complaint herein, and has made default in that behalf, and that the default of each defendant for not appearing and answering unto *plaintiff's* complaint has been duly and regularly entered herein;

Second. That on the *third* day of *May, 1894*, the *plaintiff* herein caused to be filed and recorded in the office of the County Recorder of the *City and County of San Francisco*, a notice of the pendency of this suit, containing the names of the parties thereto, the object thereof, and also a true and correct description of the lands and premises affected thereby, to wit: the lands and premises hereinafter described;

Third. That there is now due and owing to the *plaintiff*, *Samuel Davis*, from the defendant, *George Brown*, upon the promissory note, and for money expended under the terms of said mortgage, set forth and described in *plaintiff's* complaint, the sum of *ten thousand* dollars, and *forty* cents, *gold coin* of the United States, and that the defendant, *George Brown*, is personally liable for the whole amount thereof.



That there is also due *plaintiff* from *defendant*, *George Brown*, two hundred dollars and sixty cents, costs, percentage, and necessary disbursements;

Fourth. That the said sums of ten thousand and forty one-hundredth dollars and two hundred and sixty one-hundredth dollars, making in all ten thousand two hundred and one dollars, in gold coin, as aforesaid, is a valid lien upon the lands and premises in *plaintiff's* complaint, and hereinafter set forth and described, and is secured by the mortgage mentioned in said complaint;

Fifth. That each and all of the terms and conditions of said mortgage have been broken by said *defendant*, *George Brown*, and that *plaintiff* is entitled to have said mortgage enforced and foreclosed, and the lands and premises hereinafter set forth and described, sold in the manner prescribed by law, and the proceeds arising from such sale applied to and upon the payment of said sum of money so due as aforesaid;

Sixth. That each and all of the allegations and averments in *plaintiff's* complaint contained are true and correct.

Now, therefore, on motion of *John H. Smyth*, counsel for *plaintiff*,

It is adjudged and decreed, that all and singular the mortgaged premises mentioned in the said complaint and hereinafter described, or so much thereof as may be sufficient to raise the amount due to the *plaintiff* for the principal and interest, and costs of this suit, and expenses of sale, and which may be sold separately without material injury to the parties interested, be sold at public auction by the Sheriff of the City and County of San Francisco [or by *S. C. Mann*, a Commissioner hereby appointed to make said sale], in the manner prescribed by law, and according to the course and practice of this Court, and that the said Sheriff, after the time allowed by law for redemption has expired, execute a deed to the purchaser or purchasers of the mortgaged premises on the said sale.

That the said Sheriff [or Commissioner], out of the proceeds of said sale, retain his fees, disbursements, and commissions on said sale, and pay to the *plaintiff*, or his attorney, out of said proceeds, the sum of two hundred and one dollars and sixty cents, costs of this suit. Also pay to the *plaintiff* the further sum of ten thousand dollars and forty cents, the amount so found due as aforesaid, together with interest thereon at the rate of seven per cent. per annum, from the date of this decree, all in gold coin of the United States, or so much thereof as the said proceeds of sale will pay of the same.

That the *defendant*, *George Brown*, and all persons claiming, or to claim, from or under him, and all persons having liens subsequent to said mortgage by judgment or decree upon the land described in said mortgage, and his personal representatives, and all persons having any lien or claim by or under such subsequent judgment or decree, and their heirs, or personal representatives,



and all persons claiming to have acquired any estate or interest in said premises subsequent to the filing of said notice of the pendency of this action with the Recorder, as aforesaid, be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to said mortgaged premises, and every part and parcel thereof, from and after the delivery of said Sheriff's [or Commissioner's] deed.

And it is further adjudged and decreed, that the purchaser or purchasers of such mortgaged premises at such sale be let into possession thereof, and that any of the parties to this action who may be in possession of said premises, or any part thereof, and any person who, since the commencement of this action, has come into possession under them, or either of them, deliver possession thereof to such purchaser or purchasers, on production of the Sheriff's [or Commissioner's] deed for such premises, or any part thereof.

And it is further adjudged and decreed, that if the moneys arising from the said sale shall be insufficient to pay the amount so found due to the plaintiff, as above stated, with interest and costs, and expenses of sale, as aforesaid, the Sheriff [or Commissioner] specify the amount of such deficiency and balance due to the *plaintiff* in his return of said sale, and that on the coming in and filing of said return, the Clerk of this Court docket a judgment for such balance against the *defendant*, *George Brown*, and that the *defendant*, *George Brown*, pay to the said *plaintiff* the amount of such deficiency and judgment, with interest thereon at the rate of *seven* per cent. per annum from the date of said last mentioned return and judgment, and that the *plaintiff* have execution therefor.

The lands and premises directed to be sold by this decree are situated, lying, and being in the *City and County of San Francisco*, State of *California*, and bounded and particularly described as follows, to wit:

[Description.]

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining.

Done in open Court, *etc.*

### No. 867.—Default—Clerk's Entry of.

IN THE SUPERIOR COURT of the County of *San Mateo*, State of *California*.

<i>John Brown</i>	}
v.	
<i>Richard E. Ryan, et al.</i>	

In this action the defendants, *Richard E. Ryan and P. G. Ladd*, having been regularly served with process, and having failed to appear and answer the *plaintiff's* complaint on file herein, and the

time allowed by law for answering having expired, the default of said *defendants, Richard E. Ryan and P. G. Ladd* in the premises, is hereby duly entered according to law.

Attest my hand and the seal of said Court, *etc.*

### No. 868.—Demurrer—Complaint not Stating Cause of Action.

[TITLE OF COURT AND CAUSE.]

The defendant demurs to the complaint herein, and for cause of demurrer alleges:

That the complaint does not state facts sufficient to constitute a cause of action.

(Signed.)

GENERAL NOTE.—The references under this form cover all forms of demurrer to complaints in this book.

NOTE 1.—In California the defendant may demur to the complaint within the time required by the summons to answer, when it appears upon the face thereof, either—

1. That the Court has no jurisdiction of the person of the defendant, or the subject of the action;

2. That the plaintiff has no legal capacity to sue; or,

3. That there is another action pending between the same parties for the same cause; or,

4. That there is a defect, or misjoinder, of parties plaintiff or defendant; or,

5. That several causes of action have been improperly united; or,

6. That the complaint does not state facts sufficient to constitute a cause of action; or,

7. That the complaint is ambiguous, unintelligible, or uncertain.

The complaint must specify the grounds of demurrer, and unless it does, it will be disregarded. C. C. P., sec. 430.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 3062.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 4174.

NOTE 4.—In Montana the same. C. C. P., sec. 680.

NOTE 5.—In Utah the same. Comp. Laws, sec. 3221.

NOTE 6.—In North and South Dakotas the same as in California, except paragraph 7, cause of demurrer, is omitted. Rev. Stats., sec. 4909.

NOTE 7.—In Wyoming the causes are (1, 2, 3) the same as in California. The 4th and 5th are the same as the California 4th. The 6th is the same as the California 5th. The 8th is the same as the California 6th. The 9th is: That separate causes of action against several defendants are improperly joined. Rev. Stats., sec. 2449.

NOTE 8.—In Washington the same as in California, except the 7th ground is omitted, and is substituted, "That the action has not been commenced within the time limited by law." Hill's Stats., sec. 189.

NOTE 9.—In Oregon the same as in Washington. Hill's Laws, sec. 67, p. 202.

NOTE 10.—In Arizona demurrer is unknown, except to lawyers educated elsewhere. Matters taken by demurrer elsewhere must be set up by answer, under oath, unless the truth of the objectionable matter appears by record. Rev. Stats., sec. 735. If a defendant happens to be mistaken in his construction of the complaint, he is subject to prosecution for perjury.

NOTE 11.—In Colorado the same as in California. C. P., sec. 50.

### No. 869.—Demurrer—Statute of Limitations.

[TITLE OF COURT AND CAUSE.]

Now comes the defendant, and demurring to the complaint herein, for cause of demurrer, alleges:

That plaintiff should not maintain this action, because the complaint shows that it is barred by the provision of *subdivision number 3, of section 239, of the Code of Civil Procedure of the State of California.*

(Signed.)

**No. 870.—Demurrer—Misjoinder of Parties.**

[TITLE OF COURT AND CAUSE.]

The defendant demurs to the complaint, and for cause of demurrer, alleges:

That *L. S. K.* is improperly made plaintiff in said action, because it appears from the complaint that plaintiff sold and delivered the goods therein described to *A. B. C.*, and that in said transaction defendant was the agent of said *A. B. C.*

(Signed.)

**No. 871.—Demurrer—Defect of Parties.**

[TITLE OF COURT AND CAUSE.]

The defendant demurs to the complaint, and for cause of demurrer, alleges:

That there is a defect of parties plaintiff in this: It appears in the complaint that an interest in the cause of action therein stated has been assigned to *A. B.*, and the said *A. B.* should be made a party plaintiff; [or it appears, *etc.*, that *C. D.* is the principal obligor in said contract, and that the defendant is not liable, except jointly with the said *C. D.*].

(Signed.)

**No. 872.—Demurrer—Want of Jurisdiction of Person.**

[TITLE OF COURT AND CAUSE.]

The defendant demurs to the complaint in this action, and for cause of demurrer, alleges:

That the Court has no jurisdiction of the person of the defendant, because said complaint alleges that the defendant made the contract described in the complaint as *Consul of the Republic of Paraguay, at the port of San Francisco.*

(Signed.)

**No. 873.—Demurrer—Complaint Uncertain, etc.**

[TITLE OF COURT AND CAUSE.]

The defendant demurs to the complaint, and for cause of demurrer alleges:

That the complaint herein is uncertain in this: It cannot be ascertained therefrom whether plaintiff sues as assignee or administrator of the estate of *A. B.*, deceased [or any other ground].

(Signed.)

**No. 874.—Demurrer—Misjoinder of Causes of Action.**

[TITLE OF COURT AND CAUSE.]

The defendant demurs to the complaint, and for cause of demurrer, alleges:

That several causes of action have been improperly united in this: A cause of action for the conversion of personal property by



defendant, and for damages for the conversion, and an action to recover the possession of the said property.

(Signed.)

### No. 875.—Demurrer to the Answer—Not Stating Sufficient Facts.

[TITLE OF COURT AND CAUSE.]

Now comes the plaintiff, and demurring to the answer herein, for cause of demurrer alleges: That the said answer does not state facts sufficient to constitute a defense to this action.

(Signed.)

NOTE 1.—In California the plaintiff may, within the same length of time after service of the answer as the defendant is allowed to answer after service of summons, demur to the answer, or to any one or more of the several defenses or counter claims set up in the answer, upon the grounds:

1. That several causes of counter claims have been improperly joined;
2. That the answer does not state facts sufficient to constitute a defense or counter claim;
3. That the answer is ambiguous, unintelligible, or uncertain. C. C. P., secs. 443-44.

NOTE 2.—In Nevada the plaintiff may demur to the answer for insufficiency, stating the grounds of demurrer; and he may at the same time demur to one or more of the defenses set up. The time for demurrer is the same as in California. Although the statute does not divide the causes of demurrer into subdivisions, the grounds of demurrer are really the same as in California. In this respect, it is in advance of the California statute. Gen. Stats., secs. 3072.

NOTE 3.—In Idaho the same as in California. Rev. Stats., secs. 4193-94.

NOTE 4.—In Montana the same. C. C. P., sec. 711.

NOTE 5.—In Utah the same. Comp. Laws, secs. 3232-33.

NOTE 6.—In North and South Dakotas the answer may be demurred to as an answer containing new matter, where, upon its face, it does not constitute a counter claim or defense; and demurrer may be made to one or more defenses or counter claims, and reply to the residue of the counter claims. Rev. Stats., sec. 4918.

NOTE 7.—In Wyoming the plaintiff may demur generally to anything in the answer, because it is insufficient in law on its face, and—

1. That the Court has no jurisdiction;
2. That the defendant has no legal capacity to recover;
3. That there is another action between the parties for the same cause;
4. That the counter claim is not of the character specified in section 2459 of Code of Civil Procedure;
5. That the counter claim or set-off does not state sufficient facts to entitle the defendant to the relief demanded. Rev. Stats., secs. 2455-56.

NOTE 8.—In Washington the plaintiff may demur to new matter, when, on its face, it does not constitute a defense or counter claim, or he may demur to one or more defenses and reply to residue. Hill's Stats., sec. 198.

NOTE 9.—In Oregon the same as in Washington. Hill's Laws, sec. 77, p. 222.

NOTE 10.—In Arizona not allowed.

NOTE 11.—In Colorado the same as in California. C. P., sec. 50.

### No. 876.—Demurrer—Answer Ambiguous, etc.

[TITLE OF COURT AND CAUSE.]

Now comes the plaintiff, and, demurring to the answer herein, for cause of demurrer alleges: That the said answer is ambiguous in this: It cannot be ascertained therefrom whether the counter claim set up is in favor of defendant as a private person, or in his favor as executor of the estate of *A. B. C.*, deceased, [*or, it is unintelligible, because it cannot be deciphered; or, because it is written in the Chinese language; or, in other foreign languages; or, for other reasons.*]

(Signed.)

## 877.—Deposition.

IN THE SUPERIOR COURT, in and for the County of *Plumas*, State of *California*.

*John Doe*,  
Plaintiff.

v.

*Richard Roe*,  
Defendant.

Be it remembered: That, pursuant to the order hereunto annexed, and on the *first* day of *March*, 1894, at *Quincy*, in the County of *Plumas*, State of *California*, before me, *F. B. Whiting*, a Notary Public in and for the said County of *Plumas*, personally appeared *James Adams*, witness, produced on behalf of plaintiff in the above entitled action, now pending in the said Court, who, being first by me duly sworn, was then and there examined and interrogated by *E. P. Evans*, Esq., of counsel for the said plaintiff, and by *O. F. Spencer*, Esq., of counsel for the said defendant, and testified as follows:

[*Set out evidence in full.*]

STATE OF *California*,  
County of *Plumas*. } ss.

I, *F. B. Whiting*, a Notary Public in and for said county, do hereby certify that the witness in the foregoing deposition, named *James Adams*, was by me duly sworn; that said deposition was then taken at the time and place mentioned in the annexed order, to wit: at my office, in the County of *Plumas*, State of *California*, and on the *first* day of *March*, 1894, between the hours of 10 A. M. and 4 P. M. of that day; that said deposition was reduced to writing by me, and, when completed, was by me carefully read to said witness, and being by him corrected, and was by him subscribed in my presence.

In witness whereof, *etc.*

NOTE.—See No. 529 and notes.

## No. 878.—Execution for Deficiency of Sale.

IN THE SUPERIOR COURT of the *City* and County of *San Francisco*, State of *California*.

The People of the State of *California*, to the Sheriff of the *City* and County of *San Francisco*, Greeting:

Whereas, on the *sixth* day of *June*, 1894, *John Doe*, plaintiff, recovered a judgment in the said Superior Court of the *City* and County of *San Francisco*, State of *California*, against *Richard Roe* and *Paul Jones*, defendants, for the foreclosure of a certain mortgage, and the sale of the mortgaged premises, to satisfy the sum found due to the said plaintiff for principal and interest, to

wit: the sum of *nine thousand* dollars, *gold coin* of the United States of America, with interest from the date of said judgment, at the rate of *seven* per cent. per annum, till paid, together with the costs and expenses of sale, as appears to us of record; in obedience to which judgment the said Sheriff sold the said mortgaged premises, and applied the proceeds of sale as therein directed, and has made his return unto said Court that there is a deficiency of such proceeds of sale, and that there is still due to the plaintiff the sum of *five thousand* dollars, *gold coin* of the United States of America, bearing interest at the rate of *seven* per cent. per annum from the *sixth* day of *August*, 1894, (the date of the said return).

And whereas, the judgment roll in the action in which said judgment was entered is filed in the Clerk's office of said Court, in the *City and County of San Francisco*, and the said judgment was docketed in said Clerk's office, in the said *city and county*, for said balance or deficiency, on the *sixth* day of *August*, 1894, against *Richard Roe*, the judgment debtor, who is by said judgment made personally liable therefor, and the sum of *five thousand* dollars, *gold coin* of the United States of America, with interest at the rate of *seven* per cent. per annum, from the said date of said docketing, is now actually due on said judgment.

Now you, the said Sheriff, are hereby required to make the said sum due on the said judgment, with interest as aforesaid, and costs and accruing costs, to satisfy the said judgment, in *gold coin* of the United States of America, out of the personal property of the said debtor, *Richard Roe*; or, if sufficient personal property of said debtor cannot be found, then out of the real property in your county belonging to him, on the day whereon said judgment was docketed, in the aforesaid *city and county*, or at any time thereafter; and make return of this writ within *sixty* days, with what you have done indorsed hereon.

Witness, *etc.*

NOTE.—Execution on money judgment is the same after stating the judgment and amount and dates. Then say:

And whereas, the judgment roll in the action in which said judgment was entered is filed in the Clerk's office of said Court, in the *City and County of San Francisco*, and the said judgment was docketed in the Clerk's office in the said *city and county*, on the day and year first above written.

And the sum of *one thousand* dollars, with interest *thereon*, and *costs of suit taxed at fifty-four* dollars, is now (at the date of this writ) actually due on said judgment.

Now you, the said Sheriff, are hereby required to make the said sums due on the said judgment, with interest, as aforesaid, and costs and accruing costs, to satisfy the said judgment, in *gold coin* of the United States, out of the personal property of said debtor, or, if sufficient personal property of said debtor cannot be found, then out of the real property in your county, belonging to him,



on the day whereon said judgment was docketed, in the said county, or any time thereafter; and make return of this writ within *sixty (60)* days after your receipt hereof, with what you have done indorsed thereon.

NOTE 1.—In California, after sale on foreclosure of a mortgage upon real or personal property, if the return of sale shows that the proceeds are insufficient, and a balance still remains due, judgment can then be docketed for such balance in the office of the Court having jurisdiction over the execution, against the defendants personally liable for the debt, and it becomes a lien on the real estate of such judgment debtor, as in other cases on which execution may issue. Cal. C. C. P., sec. 726.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 3270.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 4520. In Idaho a mortgage or lien cannot be foreclosed until all taxes levied on the mortgage, or the debt secured by it, have been paid. This does not apply to actions to foreclose for purchase money.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 1290-93.

NOTE 5.—In Utah the same. Comp. Laws, sec. 3460.

NOTE 6.—In North and South Dakotas there is no absolute right in the plaintiff to an execution for a deficiency. When it appears (from the return) that there is a deficiency, the Court may order execution to issue. Comp. Laws, sec. 5431.

NOTE 7.—In Wyoming there is no distinction between executions following foreclosure and other executions. Rev. Stats., sec. 2741.

NOTE 8.—In Washington it is the duty of the Sheriff, in case of deficiency, to levy the same execution upon any property of defendants not exempt from execution. In such case all proceedings conform to executions issued upon common money judgments. Hill's Stats., sec. 630.

NOTE 9.—In Oregon, if the sum realized at the sale is not sufficient to satisfy the judgment, execution may issue, as in other cases. Hill's Laws, sec. 417, p. 423.

NOTE 10.—In Arizona the same as in Oregon. Rev. Stats., sec. 797.

NOTE 11.—In Colorado the same as in California. C. P., sec. 252.

### No. 879.—Entry of Judgment by Confession.

[TITLE OF COURT AND CAUSE.]

In this, *Richard Roe*, having filed his confession of judgment, wherein he authorizes and consents that judgment be entered in favor of *John Doe*, for the sum of *six hundred and fifty* dollars, *gold coin* of the United States; therefore, by reason of the law and the premises aforesaid, it is ordered and adjudged, that the said *John Doe* do have and recover of and from the said *Richard Roe* the sum of *six hundred and fifty* dollars, *gold coin* of the United States, with interest thereon, at the rate of *seven per cent. per annum*, from the date hereof until paid, together with the sum of *ten* dollars costs herein.

(Dated and signed.)

NOTE.—Cal. C. C. P., sec. 1133. See Confession of Judgment.

### No. 880.—Finding and Decision of Court.

IN THE SUPERIOR COURT of the County of *Sacramento*, State of *California*.

Present: Hon. *Samuel Dennison*, Judge.

<i>John Doe</i> ,	}
Plaintiff,	
v.	
<i>Richard Roe</i> ,	
Defendant.	

This cause came on regularly for trial on the *twenty-first* day

of August, 1894, before the Court, without a jury—a jury trial having been duly waived by the parties, and Henry Edgerton, Esq., appearing as attorney for plaintiff, and Creed Haymond, Esq., for defendant, and from the evidence introduced the Court finds the facts as follows, to wit:

1. That on the sixteenth day of May, 1894, said defendant executed and delivered to plaintiff the promissory note set forth in the complaint herein.

2. That said note was executed for and in consideration of \$700, United States gold coin, loaned by plaintiff to defendant at the date thereof. [This in the event that want of, or failure of, consideration is at issue.]

3. That \$250, and no more, United States gold coin has been paid on account thereof.

4. That the amount of principal and interest now due and unpaid, according to the terms of said note, is \$517.75, United States gold coin.

[Or, (in lieu of 1, 2, 3, 4.) The Court finds: That all the allegations of the complaint herein are true; or, The Court finds that all the allegations of the answer herein are true; or, That defendant made and paid the note and all the interest thereon before action.]

As a conclusion of law from the foregoing facts, the Court finds that plaintiff is entitled to judgment for the sum of \$517.75, in United States gold coin, and costs of suit, and it is ordered that judgment be entered accordingly; [or, that defendant is entitled to judgment for costs; or, on his counter claim, etc.]

(Signed, etc.)

NOTE 1.—In California, upon the trial of a question of fact by the Superior Court, its decision must be given in writing and filed with the Clerk within thirty days after the case is submitted for decision. The facts found and the conclusions of law must be separately stated. C. C. P., secs. 632-33.

NOTE 2.—In Nevada the same, except the decision must be given within ten days after the trial. Gen. Stats., sec. 3204.

NOTE 3.—In Idaho the same, within twenty days after submission. Rev. Stats., secs. 4406-7.

NOTE 4.—In Montana the same, and within twenty days. C. C. P., sec. 1111.

NOTE 5.—In Utah the same as in California. Comp. Laws, secs. 3379-80.

NOTE 6.—In North and South Dakotas the same. Comp. Laws, secs. 5066-67.

NOTE 7.—In Wyoming the Court must in all cases find generally for the plaintiff or for the defendant. In other respects, the same as in Montana. Rev. Stats., sec. 2563.

NOTE 8.—In Washington the same as in California, except there is no limit as to time. Hill's Stats., sec. 379.

NOTE 9.—In Oregon the same as in California, except it must be filed within the term, or with twenty days thereafter; and the facts found and conclusions of law must be stated separately without argument or reason (therefor). Hill's Laws, sec. 219, p. 306.

NOTE 10.—In Arizona there are no special rules, except it is provided that in trials by the Court they shall conform as nearly as possible to trials by jury. In this respect, Arizona stands alone and away in advance of her sister States. It has always been, by the best thinkers, considered absurd to require a Judge to give a written reason for his decision, while a jury is permitted to decide without giving any. Rev. Stats., sec. 753.

NOTE 11.—In Colorado there are no statutory provisions on the subject. Judgment shall be on the merits. Code of Procedure, sec. 76.

**No. 881.—Habeas Corpus—Petition for Writ.**

IN THE SUPERIOR COURT of the *City and County of San Francisco*,  
State of *California*.

In the Matter of the Application of }  
                     *Robert Harrison*, }  
 For a Writ of Habeas Corpus.

To the Hon. *Wm. T. Wallace*, Judge of the Superior Court of the  
*City and County of San Francisco*, State of *California*:

The petition of *Robert Harrison* respectfully shows:

That he, the said *Robert Harrison*, is unlawfully imprisoned, detained, confined, and restrained of his liberty by *John McDade*, Sheriff of the *City and County of San Francisco*, at the County Jail, in the *City and County of San Francisco*, in the State of *California*.

That the said imprisonment, detention, confinement, and restraint are illegal; and that the illegality thereof consists in this, to wit: Your petitioner is an attorney at law, in good standing and duly admitted to practice in the Supreme Court of the State of *California*. That on *December 10, 1894*, at said *city and county*, he appeared before a certain Judge of the said Superior Court, to wit: Judge *Hebbard*, requesting the said Judge to appoint *A. Green*, a nephew of petitioner, receiver of the *State Investment Insurance Company*. That said Judge refused to appoint the said nephew receiver; whereupon petitioner said to said Judge that he might go to the devil—. That before petitioner could finish the sentence, said Judge made an order committing petitioner to said jail for *five* days for contempt of said Court. Petitioner avers that he did not intend to say to said Judge that he might go to the devil; but if petitioner had not been interrupted, he would have said that he (his said nephew) might go to the devil if he was not appointed receiver.

Wherefore, your petitioner prays that a writ of Habeas Corpus may be granted, directed to the said *John McDade*, Sheriff as aforesaid, commanding him to have the body of said *Robert Harrison*, before your Honor at a time and place therein to be specified, to do and receive what shall then and there be considered by your Honor, concerning said *Robert Harrison*, together with the time and cause of his detention, and said writ; and that he, said *Robert Harrison*, may be restored to his liberty.

(Dated and signed.)

NOTE 1.—In *California* a person unlawfully imprisoned or restrained of his liberty, under any pretense, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint. The application may be signed by the prisoner, or by any person on his behalf, and must specify:

1. That the person is restrained of his liberty, the officer or person by whom he is confined or restrained, and the place where, and naming all the parties, if known, or describing them, if not known.

2. If the restraint is alleged to be illegal, the petitioner must state in what the alleged illegality consists.

3. The petition must be verified by the party making the application. Pen. Code, sec. 1473-74.



NOTE 2.—In Nevada the same. Gen. Stats., sec. 3672.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 8341.

NOTE 4.—In Montana the same. Pen. Code, sec. 2742.

NOTE 5.—In Utah the same; and the petition must set forth the facts concerning his or her imprisonment, and shall be accompanied by a copy of the warrant of commitment, or an affidavit that said copy has been demanded of the person detaining the prisoner, and by him refused or neglected to be given. Comp. Laws, sec. 5282. A Judge having authority to grant the writ, may do so on his own motion, whenever he believes there is occasion for it. *Id.*, sec. 5289.

NOTE 6.—In North and South Dakotas the same as in Utah, down to the first citation of the Code section. Comp. Laws, sec. 7839.

NOTE 7.—In Wyoming the same as in Utah; and the petition must state that the restraint is illegal and wherein, and that the illegality of the imprisonment has not been adjudged upon in a prior proceeding of the same character. If it has been adjudged, then all the facts must be stated relating to the previous proceeding, with a copy of all the papers connected therewith, or a satisfactory reason must be given for the absence of such copies. It must also state whether the applicant for a writ has been refused by any other Judge, and the reasons for the refusal must also be given. Rev. Stats., sec. 1264.

NOTE 8.—In Washington the same as in California. Hill's Stats., secs. 711-12.

NOTE 9.—In Oregon the same as in Wyoming; and the petition shall state that the legal fees have been tendered for the copies, if the copies are not attached to the petition. The writ is not allowed when the petitioner is in custody under the orders of the Government of the United States, as represented by judicial process. Hill's Laws, secs. 607, 608.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 2257.

NOTE 11.—In Colorado the same as in Utah. Mills' Stats., sec. 2106.

## No. 882.—Habeas Corpus—Order Granting Writ.

IN THE SUPERIOR COURT of the County of *San Joaquin*, State of *California*.

In the Matter of the Application of  
*Peter Smith*  
 For a Writ of Habeas Corpus. }

Upon reading and filing the petition of *Peter Smith*, duly signed and verified by him, whereby it appears that he is illegally imprisoned and restrained of his liberty by *John T. Ryan*, Sheriff of the County of *San Joaquin*, at the *County Jail* in the County of *San Joaquin*, in the State of *California*, and stating wherein the alleged illegality consists, from which it appears to me that a writ of Habeas Corpus ought to issue, it is ordered that a writ of Habeas Corpus issue out of and under the seal of the Superior Court of the State of *California*, County of *San Joaquin*, directed to the said *John T. Ryan*, Sheriff as aforesaid, commanding him to have the body of the said *Peter Smith* before me, in the courtroom of the said Court, at the County of *San Joaquin*, on the *twenty-first day of January, 1894*, at *two o'clock P. M.* of that day, to do and receive what shall then and there be considered concerning the said petitioner, *Peter Smith*, together with the time and cause of his detention, and that you have then and there the said writ.

(Dated and signed.)

NOTE.—See No. 881 and notes.

## No. 883.—Instructions to Commissioners.

## INSTRUCTIONS TO COMMISSIONERS.

1. All the *Commissioners* named in the Commission shall have notice of the time and place of executing it; and if any of them do not act, let the fact that they were notified, or could not be notified, and the reasons for their not acting, be stated.

2. The Commission must be executed by *Henry Hill*, the *Commissioner* named therein.

3. The acting *Commissioner* will examine the witnesses separately, after publicly administering to them the following oath or affirmation:

"You do solemnly swear, that the evidence you shall give in this issue, pending between *John Doe* and *Richard Roe*, shall be the truth, the whole truth, and nothing but the truth. So help you God."

Or, if the witness shall declare that he has conscientious scruples against taking an oath, or swearing in any form, he shall be permitted to make his affirmation, in the following form:

"You do solemnly declare [*or affirm*,]" as above.

4. The general style or title of the depositions must be drawn up in the following manner:

"Depositions of witnesses produced, sworn [*or affirmed*] and examined, the *thirteenth* day of *February*, in the year one thousand eight hundred and *ninety-four*, at *New York*, under and by virtue of a commission issued out of the Superior Court, in and for the *City and County of San Francisco*, State of *California*, in a certain cause therein depending and at issue between *John Doe*, plaintiff, and *Richard Roe*, defendant, as follows:

"*A. B.*, of [*insert his place of residence and occupation*], aged *forty* years and upwards, being duly and publicly sworn [*or affirmed*], pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows, viz: First—To the first interrogatory he saith," *etc.*, [*insert the witness' answer*]. "Second—To the second interrogatory he saith," *etc.*, and so on throughout.

If he cannot answer, let him say that he does not know.

5. If there be any cross interrogatories, the witness will go on thus:

"First—To the first cross interrogatory he saith," *etc.*, and so on throughout.

6. When the witness has finished his deposition, let him subscribe it, and the acting *Commissioner* will certify as follows:

"Examination taken, reduced to writing, and by the witness subscribed and sworn to this *fifteenth* day of *February*, 1894, before  
HENRY HILL, *Commissioner*."

7. If any papers or exhibits are produced and proved, they must be annexed to the depositions in which they are referred to,

and be subscribed by the witness, and be indorsed by the acting *Commissioners*, in this manner:

"At the execution of a *Commission* for the examination of witnesses, between *John Doe*, plaintiff, and *Richard Roe*, defendant, this paper writing was produced and shown to [*insert the witness' name*], and by him deposed unto at the time of his examination, before  
*HENRY HILL, Commissioner.*"

8. The acting *Commissioners* will sign their names to each half sheet of the depositions and exhibits.

9. If an interpreter is employed, one of the *Commissioners* will administer to him the following oath, and certify thereto:

"You do solemnly swear that you will truly and faithfully interpret the oath and interrogatories to be administered to *Wah Gong Lee*, a witness now to be examined, out of the English language into the *Chinese* language, and that you will truly and faithfully interpret the answers of the said *Wah Gong Lee* thereto, out of the *Chinese* into the *English* language."

Let the deposition be subscribed by the interpreter as well as by the witness, and certified by the acting *Commissioners* as follows:

"Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness, this *fifteenth* day of *February*, 1894, before

*"HENRY HILL, Commissioner."*

10. The *Commissioner* will make return on the back of the *Commission* by indorsement, thus:

"The execution of this *Commission* appears in certain schedules hereunto annexed.

*"HENRY HILL, Commissioner."*

11. The depositions and exhibits [*if any*] must be annexed to the *Commission*, and then the *Commission*, the directions, the interrogatories, cross interrogatories, depositions, and exhibits must be folded into a packet and bound with tapes. The acting *Commissioners* are to set their seals at the several meetings or crossings of the tapes, indorse their names on the outside, and direct it thus:

*"To Wm. A. Stuart, Esq.,*

*"Clerk of the Superior Court*

*"at San Francisco, California."*

12. When the *Commission* is thus executed, made up, and directed, it must be returned in the manner specified in the direction on the *Commission* if there be any.

13. If there be no direction on the *Commission* specifying the manner in which it is to be returned, then it must either be delivered to the Court by one of the acting *Commissioners* personally, or else be forwarded by some person coming to this place, and who must be able, on his arrival, to make oath before one of the Judges or the Clerk of the Court:



"That he received the same from the hands of *A. B.*, one of the *Commissioners*, and that it had not been opened or altered since he so received it."

14. In case of returning the Commission by mail, it is to be deposited by one of the acting *Commissioners* in the nearest post office, he making the following indorsement thereon:


"Deposited in the post office at the City of *New York*, this *eighth* day of *February*, 1894, by me,

"*HENRY HILL, Commissioner.*"

15. In case of returning the Commission by a vessel, it is to be deposited by one of the acting *Commissioners* in the letter-bag of such vessel, he making upon the Commission the following indorsement (it may also be forwarded by any usual conveyance):

"Deposited in the letter-bag of the ship *Glory of the Seas*, now lying at *Pier No. 12*, and bound for the port of *San Francisco*, this *nineteenth* day of *February*, 1894, by me,

"*HENRY HILL, Commissioner.*"

 The *Commissioners* are requested to be very careful to observe the foregoing instructions, as the smallest variance may vitiate the execution of the Commission.

NOTE.—California C. C. P. has no provision requiring instructions to be given to *Commissioners*. The form is drawn substantially according to the general practice. In some States the Courts regulate the matter by rule. In others there is no rule, or statute. The applicant for the Commission usually requests the Clerk to give similar instructions so that his deposition may not be ruled out for informality.

### No. 884.—Injunction—Order.

IN THE SUPERIOR COURT of the County of *Plumas*, State of *California*.

<i>John Doe,</i>	}
Plaintiff,	
v.	
<i>Richard Roe,</i>	
Defendant.	

The *plaintiff* in the above entitled cause, having commenced an action in the Superior Court of the County of *Plumas*, State of *California*, against the above named *defendant*, and having prayed for an injunction against the said *defendant*, requiring him to refrain from certain acts in said complaint, and hereinafter more particularly mentioned, on reading the said complaint in said action, *duly verified by the oath of said plaintiff*, and it satisfactorily appearing to me therefrom that it is a proper case for an injunction, and that sufficient grounds exist therefor, and an undertaking having been given, approved and as required by me, in the sum of *three thousand* dollars;

It is therefore ordered by me, the Judge of said Superior Court, that until further order in the premises, you, the said *Richard Roe*, and all your *servants, counselors, attorneys, solicitors*, and agents, and all others acting in aid or assistance of you, and each

and every of you, do absolutely desist and refrain from [state the thing prohibited thus: "Entering upon the land and premises, or any part thereof, described in the said complaint, and from cutting trees, lopping off branches, or otherwise mutilating said premises, and from using the same for the purposes of the encampment mentioned in the said complaint, and from digging holes in the ground on the said premises, and from committing any waste or nuisance whatever on said land and premises"]. To Richard Roe, defendant herein.

Done, etc.

NOTE.—Injunction orders are the same in substance everywhere. The form of the order depends always upon the facts alleged in the Bill of Complaint or affidavits.

### No. 885.—Injunction.

[TITLE OF COURT AND CAUSE.]

The People of the State of *California*, to *Richard Roe*, send Greeting:

The above named *plaintiff* having filed his complaint in our Superior Court against the above named *defendant*, praying for an injunction against said *defendant*, requiring him to refrain from certain acts in said complaint and hereinafter more particularly mentioned; on reading the said complaint in this action, *duly verified by said plaintiff*, and it satisfactorily appearing to the Judge of said Court therefrom that it is a proper case for an injunction, and that sufficient grounds exist therefor, and the necessary and proper undertaking having been given;

We, therefore, in consideration thereof, and of the particular matters in the said complaint set forth, do strictly command that you, the said *Richard Roe*, *each and every of you*, until the further order of said Court, *you and each of you*, your, and each of your servants, counselors, attorneys, solicitors, and agents, and all others acting in aid or assistance of you, *or either of you*, do absolutely desist and refrain from [state matter as in order].

Witness, etc.

### No. 886.—Judgment Roll—Certificate.

[TITLE OF COURT AND CAUSE.]

I, the undersigned, County Clerk of the County of *San Mateo*, State of *California*, and ex-officio Clerk of the Superior Court of said county, do hereby certify the foregoing to be a full, true, and correct copy of the judgment entered in the above entitled action, and recorded in Judgment Book *C*, of said Court, at page *174*. And I further certify that the foregoing papers, hereto annexed, constitute the Judgment Roll in said action.

Witness my hand, etc.

## No. 887.—Judgment by Default.

[TITLE OF COURT AND CAUSE.]

In this action the *defendant*, *Richard Roe*, having been regularly served with process, and having failed to appear and answer the *plaintiff's* complaint filed herein, the legal time for answering having expired, and no answer or demurrer having been filed, the default of the said *defendant*, *Richard Roe*, in the premises having been duly entered according to law; upon application of said *plaintiff* to the Clerk, and in pursuance of the prayer of said complaint, it is ordered and adjudged that the said *plaintiff* do have and recover from the said *defendant* judgment for the sum of *five hundred and sixty-six* dollars, gold coin of the United States, with interest thereon at the rate of *seven* per cent. per annum from the date hereof, till paid, together with said *plaintiff's* costs and disbursements incurred in this action, amounting to the sum of *forty-six* dollars.

Judgment rendered *April 26, 1894.*

CLERK'S OFFICE OF THE SUPERIOR COURT,  
of the State of *California*, County of *Santa Barbara*. } 88.

I, the undersigned, Clerk of said Court, do hereby certify the foregoing to be a full, true, and correct copy of the judgment entered in the above entitled action, and of the whole thereof.

Attest my hand and the seal of said Court, this *twenty-sixth* day of *April, 1894.*

Signed, *etc.*

NOTE 1. In California judgment may be had, if the defendant fail to answer the complaint:

1. In an action arising upon contract for the recovery of money, if no answer has been filed in time, the Clerk, upon application of the plaintiff, must enter the default of the defendant, and immediately enter judgment for the amount specified in the summons, and costs.

2. In other actions, if no answer has been filed within the time, the Clerk must enter the default; and thereafter the plaintiff may apply at any time to the Court for the relief demanded. If the taking of an account, or the proof of any fact, is necessary, the Court may take the account or hear the proof; or may order a reference for that purpose. And where the action is for the recovery of damages, the Court may order the damages to be assessed by a jury; or if, to determine the amount of damages, the examination of a long account be involved, by a reference as above provided.

3. In actions where the service of the summons was by publication, the plaintiff may, upon proof of the publication, and that no answer has been filed, apply for judgment; and the Court must thereupon require proof to be made of the demand; and if the defendant be not a resident of the State, must require the plaintiff, or his agent, to be examined on oath, respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment. C. C. P., sec. 585.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 3174.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 4360.

NOTE 4.—In Montana the same. C. C. P., sec. 1020.

NOTE 5.—In Utah the same. Comp. Laws, sec. 3345.

NOTE 6.—In North and South Dakotas, where proof of service has been filed with the Clerk, application is made to the Court for judgment upon showing that no answer has been received. If the complaint is not sworn to, proof of the demand must be made to the Court of the amount due. In other respects similar to California, except if the summons was served by publication the Court may require the plaintiff to give bond to restore any property taken by him by virtue of the judgment, in case defendant should be thereafter admitted to defend the action. Comp. Laws, sec. 5025.

NOTE 7.—In Wyoming, in default, or at any time when issue is not joined upon a cause of action, plaintiff may take judgment before the Court for so much of his cause of action confessed. If necessary, an account will be taken as in other cases. Rev. Stats., sec. 2667.



NOTE 8.—In Washington the same as in California, except the Court, instead of the Clerk, enters the judgment. Hill's Stats., sec. 412.

NOTE 9.—In Oregon the same as in California, except a bond must be filed in cases of default to answer a published summons, the same as in Dakota. Hill's Laws, sec. 249, p. 331.

NOTE 10.—In Arizona the same as in the first paragraph in California. Rev. Stats., sec. 807.

NOTE 11.—In Colorado the first and second paragraphs the same as in California. The third is omitted. C.P., sec. 168.

### No. 888.—Judgment by Default by Court.

[TITLE OF COURT AND CAUSE.]

In this action the defendant, *Richard Roe*, having been regularly served with process, and having failed to appear and answer the plaintiff's complaint filed herein, and the legal time for answering having expired, and no answer or demurrer having been filed, the default of said defendant, *Richard Roe*, in the premises having been duly entered according to law;

Now, at this day, on application of *Jos. M. Wood*, attorney for said plaintiff, it is hereby ordered that judgment be entered herein against the said defendant, *Richard Roe*, as well as against defendant *John Smith*, not served with process, in accordance with the prayer of said plaintiff's complaint on file herein.

Wherefore, by reason of the law and the premises aforesaid, it is ordered, adjudged, and decreed, that *John Doe*, plaintiff, do have and recover of and from the said defendant, *Richard Roe*, the sum of *five hundred and sixty* dollars, United States gold coin, with interest thereon at the rate of *seven* per cent. per annum from the date hereof until paid; together with said plaintiff's costs and disbursements incurred in said action, amounting to the sum of *forty-eight* dollars and *seventy-five* cents.

And it is further ordered, adjudged, and decreed, that said plaintiff do have execution against the separate property of the defendant, *Richard Roe*, as well as against the joint property of all the said defendants.

Judgment rendered *June 18, 1894*.

NOTE.—This form of judgment is against persons associated in any business under a common name.

### No. 889.—Judgment by the Court.

[TITLE OF COURT AND CAUSE.]

This cause came on regularly for trial on the *nineteenth* day of *October, 1894*, *John Brown*, Esq., appearing as counsel for plaintiff, and *Charles Thomas*, Esq., for the defendant. A trial by jury having been expressly waived by the respective parties, the cause was tried before the Court without a jury, whereupon witnesses on the part of plaintiff and defendant were duly sworn and examined, and documentary evidence introduced by respective parties, and the evidence being closed, the cause was submitted to the Court for consideration and decision; and, after due deliberation thereon, the Court files its finding and decision in writ-

ing, and orders that judgment be entered herein in favor of plaintiff in accordance therewith.

Wherefore, by reason of the law and the finding aforesaid, it is ordered, adjudged, and decreed, that *John Doe*, the plaintiff, do have and recover, of and from *Richard Roe*, the defendant, the sum of *eight hundred (800) dollars*, with interest thereon at the rate of *seven per cent. per annum from the date hereof until paid*, together with said plaintiff's costs and disbursements incurred in this action, amounting to the sum of *thirty-five dollars*.

Judgment recorded *October 24, 1894*, in Book *B*, page *67*.

### No. 890.—Judgment on Verdict.

[TITLE OF COURT AND CAUSE.]

This action came on regularly for trial. The said parties appeared by their attorneys, *Frank G. French*, Esq., counsel for plaintiff, and *Stanley, Stoney & Hayes*, for defendant. A jury of *twelve* persons was regularly impaneled and sworn to try said action. Witnesses on the part of the plaintiff and defendant were sworn and examined. After hearing the evidence, the arguments of counsel, and instructions of the Court, the jury retired to consider of their verdict, and subsequently returned into Court, with the verdict signed by the foreman, and, being called, answered to their names, and say: "We, the jury in this cause, find a verdict for the plaintiff, for *\$590*."

Wherefore, by virtue of the law, and by reason of the premises aforesaid, it is ordered, and adjudged, and decreed, that said plaintiff have and recover from said defendant the sum of *five hundred and ninety dollars*, with interest thereon at *seven per cent. per annum from the date hereof until paid*, together with said plaintiff's costs and disbursements incurred in this action, amounting to the sum of *fifty dollars*.

Judgment recorded the *eighteenth day of August, 1894*, Book *B*, page *50*.

### No. 891.—Juror's Certificate of Service.

IN THE SUPERIOR COURT of the County of *San Luis Obispo*, State of *California*.

I hereby certify that *J. H. Hollister* was summoned and served as a *Grand Juror* of said Superior Court during the month of *August, 1894*, and that there is due him for such services for

Mileage .....	\$ 4 00
Per diem .....	26 00
Total .....	\$30 00

Attest my hand and the seal of said Court, etc.

## No. 892.—Juror—Summons of.

STATE of California, }  
 County of Napa. } ss.

To *Richard Roe*: You are hereby summoned to appear in the Superior Court of the County of *Napa*, State of *California*, at the opening of the *regular session thereof*, at the court-room of said Court, in the court-house in said county, on the *eighth* day of *September, 1894*, at *ten o'clock A. M.*, to serve as a trial juror, and herein fail not.

(Dated.)

## No. 893.—Mandamus—Peremptory.

[TITLE OF COURT AND CAUSE.]

The People of the State of *California*, [to the *Tribunal, Corporation, Board, or Person, to whom it is directed*], Greeting:

Whereas, it manifestly appears to us by the affidavit of *John Smyth*, on the part of the said *plaintiff* and the party beneficially interested herein, that [*state generally the allegation against the party to whom it is directed*]; and that there is not a plain, speedy, and adequate remedy in the ordinary course of law.

Therefore, we do command you that immediately after the receipt of this writ, you do [*the act required to be performed*].

Witness, etc.

NOTE 1.—In California the writ may be issued by any Court, except a Justice's or Police Court, to any inferior tribunal, corporation, board, or person, to compel performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station; or to compel the admission of a party to a right, or office, to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person. It issues when there is not a plain, speedy, and adequate remedy at law. It is issued upon affidavit upon the application of the party beneficially interested. It is either alternative or peremptory. C. C. P., sec. 1084-87.

NOTE 2.—In Nevada the same, except it may be issued by any Court except a Justice's. Gen. Stats., secs. 3469-71.

NOTE 3.—In Idaho the same as in California, except a Justice's or Probate Court cannot issue the writ. Rev. Stats., secs. 4976-79.

NOTE 4.—In Montana the same as in California, except a Justice's, Probate, and Mayor's Court cannot issue. C. C. P., secs. 1960-73.

NOTE 5.—In Utah the same as in Idaho. Comp. Laws, secs. 2729-32.

NOTE 6.—In North and South Dakotas the same as in California. It cannot be issued except by the Supreme and District Courts. Comp. Laws, secs. 5617-18.

NOTE 7.—In Wyoming the same as in Dakota. Rev. Stats., secs. 3073-77.

NOTE 8.—In Washington the same as in California; but the Supreme Court must not issue the writ, except for the exercise of its powers (conferred by law). The Superior Court may issue the writ. It is expressly provided that the writ shall not be issued to control judicial discretion. Hill's Stats., secs. 735-38.

NOTE 9.—In Oregon the same as in Washington, except the Circuit Court only may issue, and the Supreme Court to enforce its jurisdiction. Hill's Laws, secs. 592-606, p. 506.

NOTE 10.—In Arizona the same as in California—by the Supreme Court and District Court. Rev. Stats., secs. 2335-37.

NOTE 11.—In Colorado the writ may be issued by any Court of record. This provision makes it the same as in California, because the Supreme and Superior Courts are the only Courts of record. C. P., secs. 307-9.



**No. 894.—Mandamus—Alternative.**

[TITLE OF COURT AND CAUSE.]

The People of the State of California, to [*the Tribunal, Corporation, Board, or Person, to whom it is directed*], Greeting:

Whereas, it manifestly appears to us by the affidavit of *John Styles*, on the part of the said *John Doe*, the *plaintiff*, and the party beneficially interested herein, that [*state generally the allegation against the party to whom it is directed*], and that there is not a plain, speedy, and adequate remedy in the ordinary course of law:

Therefore, we do command you, that immediately after the receipt of this writ, you do [*the act required to be performed*], or that you show cause before this Court, at the court-room thereof, in the *New City Hall*, in the *City and County of San Francisco*, on the *fourth day of August, 1894*, at the opening of the Court on that day, why you have not done so.

Witness, *etc.*

NOTE.—See No. 893 and notes.

**No. 895.—Memorandum of Costs and Disbursements.**

[TITLE OF COURT AND CAUSE.]

## DISBURSEMENTS.

Sheriff's Fees, to service of Summons.....	\$ 1 25
Clerk's Fees, to commencing Suit and entering up Judgment. . . . .	11 00
Witness' Fees, to wit: <i>John Smith, one day</i> .....	2 00
Verification to Complaint.....	50
Total.....	\$14 75

STATE OF *California*,  
*City and County of San Francisco.* } 83.

*J. C. Bates*, being duly sworn, says: That he is the attorney for the *plaintiff* in the above entitled action, and, as such, is better informed relative to the above costs and disbursements than the said *plaintiff*. That, to the best of this affiant's knowledge and belief, the items in the above memorandum contained are correct, and that the said disbursements have been necessarily incurred in the said action.

(Subscribed and sworn to.)

NOTE 1.—In California the party recovering judgment, who claims costs, must deliver to the Clerk, and serve upon the adverse party, within five days after the verdict or notice of the decision—or, if the entry of the judgment on the verdict or decision be stayed, then before such entry is made—a memorandum of the items of his costs, verified by the oath of the party, or agent, or by the clerk of his attorney, or by his attorney, stating that, to the best of his knowledge and belief, the items are correct, and that the disbursements have been necessarily incurred in the action. A party dissatisfied may, within five days after notice of filing of the bill, move to have the same taxed by the Court, or by the Judge thereof at chambers. C. C. P., sec. 1033.

NOTE 2.—In Nevada the same, except the memoranda must be delivered within two days. It must be verified by the party or his attorney. He may recover witness fees, though not actually paid by him. No notice of the decision need be given, nor is there any statutory provision as to "taxing" costs. The same provisions apply to Justices' Courts. Gen. Stats., sec. 3508, as amended by Stats. 1889, p. 29.

NOTE 3.—In Idaho the same as in California, except the notice to tax must be given within three days. Rev. Stats., sec. 4912.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 1867.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 3695.

NOTE 6.—In North and South Dakotas a cost bill, in some respects similar to the above form, is in use. The Clerk enters in the judgment the statutory costs, upon application of the prevailing party, upon five days' notice to the defeated party, except when the attorneys reside in the same city or town. When the application for costs is made the affidavits by the party or attorney must set them out in detail, stating, in substance, that the items have been, or will be, necessarily incurred in the action. A copy must be served with the application. The above form can be adopted. Comp. Laws, sec. 5197.

NOTE 7.—In Wyoming there is no necessity of a costs bill. They are adjusted in the judgment. Rev. Stats., secs. 2687-2700.

NOTE 8.—In Washington the prevailing party's costs and disbursements shall be verified in detail by affidavit of any person knowing the facts, within ten days after the judgment. The items should be separately stated, as in the form. Hill's Stats., sec. 830.

NOTE 9.—In Oregon the same as in Washington; but the affidavit must be filed within five days from entry of judgment, and a copy must be served upon the adverse party. Hill's Laws, secs. 556-58, p. 493.

NOTE 10.—In Arizona the same as in California. The party, or his attorney or agent, may verify the affidavit, and it must be delivered to the Clerk within three days after the rendition of the verdict. Rev. Stats., sec. 912.

## No. 896.—Notice of Appeal.

[TITLE OF COURT AND CAUSE.]

You will please take notice that the defendants in the above-entitled action hereby appeal to the Supreme Court of the State of *California*, from the judgment therein entered, in the said Superior Court, on the *twenty-fourth* day of *January*, 1894, in favor of the plaintiff in said action, and against said defendants; and from the whole thereof, *and also from the order denying said defendant's motion for new trial, made and entered in the minutes of said Court, the fourth day of April, 1894.*

(Dated and signed.)

NOTE 1.—In California an appeal is taken by filing with the Clerk of the Court in which the judgment or order appealed from is entered, a notice stating the appeal from the same, or some specific part thereof, and serving a similar notice on the adverse party, or his attorney. C. C. P., sec. 940.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 3353.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 4803.

NOTE 4.—In Montana the same. C. C. P., sec. 1724.

NOTE 5.—In Utah the same. Comp. Laws, sec. 3636.

NOTE 6.—In North Dakota the notice must be served on the Clerk and the attorney for respondent, stating the appeal from the judgment or order, and whether taken from the whole or part of the judgment or order, and if from a part, stating what part. Stats. 1891, p. 304, sec. 4.

NOTE 7.—In South Dakota the same as in North Dakota. Stats. 1887, p. 55, sec. 3.

NOTE 8.—In Wyoming appeals are made from Probate Courts to District Courts, and from District Courts to the Supreme Court, but appeals to the Supreme Court are made by *petition in error*, which is in the form of a recital of the proceedings of the Court below and statement of the errors committed. In such proceedings the above notice is unnecessary. Rev. Stats., sec. 3123.

NOTE 9.—In Washington notice of appeal is given orally in open Court, or before the Judge at chambers, at the time when the judgment or order is made. It is only necessary to say that appeal is taken to the Supreme Court from the judgment or order. Thereupon, the Court orders the Clerk to enter the notice in the minutes. If the dissatisfied party is not present when the judgment or order was made he may, within six months, serve the above notice, and file the same with the Clerk within five days, with proof or written admission of service. Laws 1893, p. 120, secs. 3, 4.

NOTE 10.—In Oregon the notice of appeal must state the same facts as in the above notice, and in addition, *in actions at law*, shall specify the grounds of error with reasonable certainty. If the appeal is from a decree it is unnecessary to state the grounds of error. Hill's Laws, p. 477, sec. 537.

NOTE 11.—In Arizona appeal is taken by giving notice in open Court during the term. The Clerk enters the notice on his docket. Rev. Stats., sec. 849.

NOTE 12.—In Colorado there is a Court of Appeals; from such Court to the Supreme Court, where the amount involved is over \$2500, and in replevin suits, land, and freehold cases. To the Supreme Court appeal is taken by statement of the case and bill of exceptions. C. P., sec. 385.

### No. 897.—Notice of Motion for Commission to Examine Witness out of the State.

[TITLE OF COURT AND CAUSE.]

The defendant and his attorney will please take notice that upon the affidavit of plaintiff served with this notice, and upon the complaint and papers filed in the above entitled action, the plaintiff will apply to the Honorable *O. P. A.*, presiding Judge of this Court, at the court-room thereof, in the *City and County of San Francisco*, on the *twenty-sixth* day of *January, 1894*, at the hour of *ten* o'clock A. M., or as soon thereafter as counsel can be heard, for an order directing a commission to issue out of, and under the seal of this Court, to take the testimony of *William Coe*, a witness residing out of this State, directed to some proper person residing at the City of *New York*, in the State of *New York*, then and there to be selected and appointed by the Judge of this Court.

(Dated and signed.)

NOTE.—See notes to Nos. 530 and 531.

### No. 898.—Notice of Taking Deposition, etc.

[TITLE OF COURT AND CAUSE.]

STATE OF CALIFORNIA, }  
*City and County of San Francisco.* } ss.

You will please take notice that the depositions of *William Gubbins* and *Jethro Mix*, witnesses on behalf of the plaintiffs in the above entitled action, to be used upon the trial thereof, will be taken before *Luther Watson, Esq.*, a Notary Public in and for the County of *Placer*, in the State of *California*, at his office in the City of *Auburn*, in the County of *Placer*, on the *fourteenth* day of *June, 1894*, between the hours of *9* A. M. and *4* P. M. of that day; commencing at *9* o'clock A. M., and if not completed on that day, the taking thereof will be continued from day to day, successively thereafter, and over *Sundays*,\* at the same place, until completed.

And you will further take notice, that the annexed is a copy of an affidavit of *John Doe*, one of said plaintiffs, showing that the case is one in which depositions may be taken.

(Signed and dated.)

NOTE.—See notes to Nos. 530 and 531.

### No. 899.—Notice of Application of a Society to Effect a Loan by Mortgage.

[TITLE OF COURT AND CAUSE.]

Pursuant to an order of the Hon. *Robert Y. Hayne*, Judge of said Superior Court, notice is hereby given to any and all persons



interested in the real property of the said society, and in any matters thereof, to show cause, if any they can, on *Saturday*, the *fourth day of August, 1894*, on that day, or as soon thereafter as the same can be heard, at the court-room of said Court, in the *City and County of San Francisco*, why the trustees of the society should not be authorized by order of this Court to mortgage the real property of said society, situated

[Description.]

And to make, execute, and deliver with such mortgage a bond or promissory note, under the corporate seal and in the corporate name of said society, as evidence of the indebtedness, to secure which the mortgage is to be made.

Witness may hand, *etc.*

NOTE.—See No. 926 and notes.

### No. 900.—Notice of Motion.

[TITLE OF COURT AND CAUSE.]

The plaintiff and his attorney will please take notice that upon affidavits and upon the *files, papers, proceedings, and records in the above entitled action*, I shall move the Court, at the court-room thereof, at the *City Hall*, in the *City and County of San Francisco*, on the *eighth day of November, 1894*, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, *that the judgment entered by default against the defendant in the said action, and all subsequent proceedings, be set aside for irregularity.*

Said motion will be made and based on the ground *that said default was taken against said defendant before the time allowed by law for answering, and the extension in writing by the stipulation of said plaintiff's attorney had expired.* [State any other grounds.]

(Signed and dated.)

### No. 901.—Notice of Intention to Move for New Trial.

[TITLE OF COURT AND CAUSE.]

Please take notice, that the defendant intends to move the Court for a new trial in this case, upon the following grounds, viz:

*First. That the evidence is insufficient to justify the decision of the Court, giving judgment for plaintiff.*

*Second. That said decision is against law.*

*Third. On account of errors in law, occurring at the trial, and excepted to by the defendant.*

There are other grounds for new trial than the foregoing.

The said motion will be made upon a statement of the case.

(Signed and dated.)

NOTE 1.—In California the party intending to move for a new trial must, within ten days after the verdict of the jury, if the action were tried by a jury, or after notice of the decision of the Court or referee, if the action were tried without a jury, file with

the Clerk, and serve upon the adverse party, a notice of his intention, designating the grounds upon which the motion will be made, and whether the same will be made upon affidavits or the minutes of the Court, or a bill of exceptions, or a statement of the case. C. C. P., sec. 659.

NOTE 2.—In Nevada the same, except the notice must be given within five days. Gen. Stats., sec. 3219.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 4441.

NOTE 4.—In Montana the same, except there is no necessity to give the defeated party notice of the decision; the time runs from the decision or verdict. C. C. P., sec. 1173.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 3402.

NOTE 6.—In North and South Dakotas the same as in California (within twenty days). Comp. Laws, sec. 5090.

NOTE 7.—In Wyoming the application is made on motion. No provision is made for notice, but, in practice, the notice in the text may be given; the grounds for new trial being the same (and others) as in the notice. Rev. Stats., secs. 2652-56.

NOTE 8.—In Washington the same as in California (within two days). Hill's Stats., sec. 404.

NOTE 9.—In Oregon the same form may be used as in a motion for new trial, although there is no provision for notice of intention to be served. Hill's Laws, secs. 234-36.

NOTE 10.—In Arizona the same substantially as in Oregon. Rev. Stats., secs. 833-37.

NOTE 11.—In Colorado the same as in Oregon. C. P., sec. 218.

## No. 902.—Notice of Pendency of Action of Ejectment.

[TITLE OF COURT AND CAUSE.]

Notice is hereby given, that an action has been commenced in the Superior Court of the *City and County of San Francisco, State of California*, by the above named *plaintiff* against the above named *defendant*, to recover certain real estate and the possession, with damages for the withholding thereof; and that the premises affected by this suit and described in said complaint, are situated in the said *city and county, State of California*, and are bounded and described as follows, to wit: *[description]*.

(Signed by attorney or plaintiff.)

NOTE 1.—In California in an action affecting the title or the right of possession of real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may record in the office of the Recorder of the county in which the property is situated a notice of the pendency of the action, containing the names of the parties and the object of the action or defense, and a description of the property in that county affected thereby. From the time of filing such notice for record only shall a purchaser or incumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action, and only of its pendency against parties designated by their real names. C. C. P., sec. 409.

NOTE 2.—In Nevada down to the first period the first passage the same. Gen. Stats., sec. 3049.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 4142.

NOTE 4.—In Montana the same. C. C. P., sec. 634.

NOTE 5.—In Utah the same. Comp. Laws, secs. 3206.

NOTE 6.—In North and South Dakotas the same, except it need not be filed in actions to foreclose mortgages or liens. Comp. Laws, sec. 4397.

NOTE 7.—In Wyoming, when the summons has been served, or publication made, the action is pending so as to charge third persons with notice, and while pending no interest can be acquired by third persons in the subject matter thereof as against the plaintiff's title. No notice other than as aforesaid is necessary. As to other counties than the one where action is pending, a certified copy of the judgment must be filed to convey notice. Rev. Stats., secs. 2442-43.

NOTE 8.—In Washington the same as in California, and also in attachments of any property. It is filed with the Auditor of the county. Stats. 1893, p. 412, sec. 17.

NOTE 9.—In Oregon the record of mortgages, liens, etc., is the only notice necessary. The only excuse for the California statute regulating such notice is that it makes work for Clerks and Recorders.

NOTE 10.—In Arizona the same as in Oregon.

NOTE 11.—In Colorado the same as in California. C. P., sec. 36.

**No. 903.—Notice of Pendency of Action for Foreclosure of Mortgage.**

[TITLE OF COURT AND CAUSE.]

Notice is hereby given, that an action has been commenced in the Superior Court of the *City and County of San Francisco*, State of *California*, by the above named *plaintiff* against the above named *defendant*, for the foreclosure of mortgage, made the *fourth* day of *June*, 1894, by *Richard Roe*, to *John Doe*, and recorded in the office of the County Recorder of the *City and County of San Francisco*, State of *California*, on the *fourth* day of *June*, 1894, in Liber *ninety-eight* of Mortgages, page *forty-seven*, and that the premises thereby conveyed, described in said complaint and affected by this suit, are situated in the said *city and county*, State of *California*, and are described as follows, to wit: *[description of property]*.

(Signed.)

NOTE.—See notes to No. 902.

**No. 904.—Notice of Pendency of Action to Quiet Title.**

[TITLE OF COURT AND CAUSE.]

Notice is hereby given, that an action has been commenced in the Superior Court of the *City and County of San Francisco*, State of *California*, by the above named *plaintiff*, against the above named *defendants*, to quiet the title to the premises and real estate in the complaint in the said action, and hereinafter described, and to determine all and every claim, estate, or interest therein of said *defendants*, or either or any of them, adverse to the said *plaintiff*, and that the premises affected by this suit are situated in the said *city and county*, and are bounded and described as follows, to wit: *[description]*.

(Signed.)

NOTE.—See notes to No. 902.

**No. 905.—Notice of Exception to Sufficiency of Sureties on Undertaking.**

[TITLE OF COURT AND CAUSE.]

SIR: You will please take notice that the *defendant* in the above entitled action does not accept the undertaking given on the part of the *plaintiff* in the said action, upon *your taking the personal property claimed by him*, but expressly excepts to the same, and to the sufficiency of the sureties thereto; and that such sureties, and each of them, are required to justify, as provided by law.

(Signed and dated.)

**No. 906.—Notice of Justification of Sureties.**

[TITLE OF COURT AND CAUSE.]

SIR: Please take notice, that the sureties upon the undertaking of the *plaintiff* in the above entitled action will justify before



the County Clerk, at his office in the *City and County of San Francisco*; on the *second day of December, 1894*, at *two o'clock P. M.*  
(Dated and signed.)

### No. 907.—Notice of Intention to Become Sole Trader.

[TITLE OF COURT AND CAUSE.]

Notice is hereby given that I, *Amelia Jones*, wife of *Thomas Jones*, resident of the *City and County of San Francisco*, being desirous of availing myself of the provisions of Title XII., Part III. of the Code of Civil Procedure, intend to make application to the Superior Court of the *City and County of San Francisco*, State of *California*, on *Monday, the third day of November, 1894*, at the opening of the Court on that day, or on such other day to which the hearing may be postponed by the Court, for a judgment and order of said Superior Court, authorizing me to carry on and transact business in my own name and on my own account as sole trader. The nature of the business I propose to carry on and conduct is that of buying and selling *goods, wares, and merchandise, and keeping a general variety store in said City and County of San Francisco.*

(Dated and signed.)

NOTE.—See No. 546 and notes.

### No. 908.—Notice—Application to Disincorporate.

[TITLE OF COURT AND CAUSE.]

Notice is hereby given, that the *Metropolitan Gas Company*, a corporation formed under the laws of the State of *California*, has presented to the Superior Court of the *City and County of San Francisco*, a petition praying to be allowed to disincorporate and dissolve; and that *Friday, the twelfth day of September, 1894*, at *10 o'clock in the forenoon*, or as soon thereafter as counsel can be heard, has been appointed as the time, and the court-room of the Superior Court in and for the *City and County of San Francisco*, as the place, at which the said application is to be heard.

In witness whereof, *etc.*

NOTE.—See No. 929, and note.

### No. 909.—Order of Arrest—Civil Cases.

[TITLE OF COURT AND CAUSE.]

The People of the State of *California*, to the Sheriff of the *City and County of San Francisco*:

The above named *plaintiff* having commenced an action in the Superior Court of the *City and County of San Francisco*, State of *California*, against the above named *defendant*, and it duly appearing to me, from affidavit submitted on the part of the said *plaintiff*, that a sufficient cause of action exists, and that the case

is one wherein the *defendant's* arrest should be ordered; and the necessary undertaking having been given, I, the undersigned, Judge of the said Superior Court, by virtue of the authority in me vested by law, do order and require you, the said Sheriff of the *City and County of San Francisco*, forthwith to arrest the said *defendant*, if he may be found in your county, and hold him to bail in said action in the sum of *two thousand one hundred and fifty* dollars, and that you return this order, with your proceedings thereon, to the Clerk of the said Superior Court on the *twentieth* day of *June, 1894*.

(Dated and signed.)

**NOTE 1.—In California the defendant may be arrested.—**

1. In an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the State with intent to defraud his creditors;

2. In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied, or converted to his own use, by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity; or for misconduct or neglect in office, or in a professional employment, or for a willful violation of duty;

3. In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of, to prevent its being found or taken by the Sheriff;

4. When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought; or in concealing or disposing of the property for the taking, detention, or conversion of which the action is brought;

5. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

An order for the arrest of the defendant must be obtained from the Judge of the Court in which the action is brought.

The order may be made whenever it appears to the Judge, by affidavit, that a sufficient cause of action exists, and that the case is one of those mentioned above. The affidavit must be either positive or upon information and belief; and when upon information and belief, it must state the facts upon which the information and belief are founded. C. C. P., secs. 479-81. See Affidavits.

**NOTE 2.—In Nevada the same. Gen. Stats., secs. 3095-97.**

**NOTE 3.—In Idaho the same, except the order may also be obtained from a Probate Judge. Rev. Stats., sec. 4241-43.**

**NOTE 4.—In Montana the first paragraph is the same as in California, and "when the action is for the willful injury to person, or character, or property, knowing the property to belong to another." The same in all other respects, except a Probate Judge may make the order, the same as in Idaho. C. C. P., sec. 801.**

**NOTE 5.—In Utah the same as in Montana, but the order must be obtained from the Judge of the Court in which the action is brought. Comp. Laws, secs. 3260-63.**

**NOTE 6.—In North and South Dakotas the same as in California, and "for injuring, or wrongfully taking, detaining, or converting property," (of any description). Comp. Laws, secs. 4945-47.**

**NOTE 7.—In Wyoming no arrest is allowed before judgment; but may be after judgment, for reasons similar to those sufficient in California. When allowed, the above form may be adopted. Rev. Stats., secs. 2795-2805.**

**NOTE 8.—In Washington (1st) when the defendant is a non-resident of the State, or is about to remove therefrom; or when the action is for injury to person or character, or for wrongfully taking or converting property. Paragraph 2 the same as in California, and in an action "on a promise to marry." Paragraph 3, the same as in California, "and with intent that it should not be taken, or found (by the Sheriff), or with intent to deprive the plaintiff of its use." And (paragraph 6), when the action is to prevent threatened injury to property. (Paragraph 7), after final judgment, when defendant has money, and no other property, subject to execution, which he ought, but refuses, to apply in satisfaction of the judgment. Hill's Stats., sec. 229.**

**NOTE 9.—In Oregon the same as in California, with first paragraph the same as in Washington; but a female cannot be arrested. Hill's Laws, sec. 108, p. 247.**

**NOTE 10.—In Colorado no arrest before judgment, but may be after, in proceedings supplemental to execution. See Affidavits.**

**No. 910.—Order for Commission to Take Testimony.**

[TITLE OF COURT AND CAUSE.]

Upon reading and filing the affidavit of *John Doe*, and upon the *files, papers, and records* in this action, and due proof of service of notice of motion having been made and filed, on motion of *Wm. C. Burnett, Esq.*, attorney for the *plaintiff* in said action:

It is ordered that a commission issue out of and under the seal of this Court, directed to *Henry Hill*, a person agreed upon by and between the parties, residing at the *City of New York*, in the State of *New York*, to take the testimony of *William Coe*, residing at the same place, as a witness on behalf of the *plaintiff*, upon such proper interrogatories, direct and cross, as the respective parties may prepare to be settled, if the parties shall disagree as to their form, by the *Honorable Judge* of this Court, on *Wednesday, February 3, 1894*, at ten o'clock A. M., at the court-room of this Court.

(Dated and signed.)

NOTE.—See No. 741.

**No. 911.—Order of Publication of Petition of Church to Mortgage Property.**

[TITLE OF COURT AND CAUSE.]

On reading the annexed petition of "*The Trustees [insert name]*," a religious corporation, and on motion of *A. B.*, in behalf of said corporation;

It is ordered that said petition be presented, and said application made to the said Superior Court, at the court-room thereof, at the *City Hall*, in said city and county, on *Tuesday*, the *twenty-sixth* day of *September, 1894*, at the opening of the Court on that day, or as soon thereafter as said application can be heard.

And it is further ordered, that notice of said application be published in the *Daily Evening Bulletin*, a newspaper printed and published in said city and county, each day for *five* days immediately preceding said application.

(Dated and signed.)

**No. 912.—Order Authorizing a Church to Give a Mortgage.**

[TITLE OF COURT AND CAUSE.]

In the above entitled matter, on reading and filing the petition of "*The Trustees [insert name]*," and it satisfactorily appearing to the Court therefrom, and the evidence adduced in support thereof, that it will be to the benefit, interest, and advantage of such church and congregation to grant the prayer of said petition, and it also satisfactorily appearing to the Court, by competent proof, that due notice of this application has been given;

Now, therefore, on application of said trustees, by their attorney, *C. H. Gray*, it is ordered that the said trustees may make, execute, and acknowledge, under and in the (corporate) name



and seal of said trustees, a mortgage upon the property described in said petition to secure the payment of such sum, not exceeding, *five thousand* dollars, as they can obtain.

And it is further ordered, that the said corporation do execute and deliver with such mortgage a promissory note for such amount as aforesaid, under the corporate name of such trustees.

And it is further ordered, that said trustees, on receiving said sum of money as aforesaid, shall appropriate the same, or so much thereof as may be necessary for that purpose, to the payment of the present indebtedness of said corporation and church; and if any balance remain after the payment of such debts, it shall be used, under the direction of said trustees, for the benefit of said church.

Done in open Court, *etc.*

### No. 913.—Order of Sale.

[TITLE OF COURT AND CAUSE.]

THE PEOPLE OF THE STATE OF *California*, to the Sheriff of the *City and County of San Francisco*, Greeting:

Whereas, on the *sixth* day of *May*, 1894, *C. B. Williams*, the above named plaintiff, recovered a judgment and decree in the Superior Court of the *City and County of San Francisco*, State aforesaid, against *John Jacob Jordan*, the defendant, in an action wherein the said *C. B. Williams* was plaintiff, and the said *John Jacob Jordan* defendant, which said judgment and decree was on the *sixth* day of *May*, 1894, recorded in Judgment Book *B* of said Court, at page 76. and the roll filed and judgment and decree docketed in the Clerk's office thereof, and in and by which said judgment and decree it is ordered, adjudged, and decreed that the lands and premises mentioned and described in the said judgment and decree be sold at public auction, as in said judgment and decree particularly set out.

Now, therefore, you, the said Sheriff, are hereby commanded and required to proceed to give notice for sale, and to sell the premises described in said judgment and decree, a copy of which is hereto annexed and made a part hereof, and apply the proceeds of said sale as in said judgment and decree directed, and to make and file your report of such sale with the Clerk of this Court within *sixty* days from the date of your receipt hereof, and to do all things according to the terms and requirements of said judgment and decree and the provisions of the statute in such case made and provided.

Witness, *etc.*

### No. 914.—Order to Transfer Cause—Disability of Judge.

[TITLE OF COURT AND CAUSE.]

It being shown to the Court, by *E. Townsend*, Esq., of counsel for the defense, that the Judge of this Court was heretofore of

counsel in a case involving the same title which is in issue in this cause: Wherefore, it is ordered, that this cause be transferred to the Superior Court of *Sutter County* for trial. The costs of this term to abide the event of the suit.

### No. 915.—Order for Publication of Summons.

[TITLE OF COURT AND CAUSE.]

Upon reading and filing the affidavit of *John Doe*, and it satisfactorily appearing therefrom that the defendant, *Richard Roe*, has departed from, resides out of the State, and cannot, after due diligence, be found within this State; and it also appearing, *from the complaint herein duly verified by said plaintiff*, that a good cause of action exists in this action, in favor of the plaintiff therein, and against the said defendant, and that the said defendant, *Richard Roe*, is a necessary and proper party defendant thereto; and it further appearing that a summons has been duly issued out of said Court in this action, and that personal service of the same cannot be made upon the said defendant, *Richard Roe*, for the reasons hereinbefore contained, and by the said affidavit made to appear; on motion of *Charles Fox*, Esq., attorney for the plaintiff, it is ordered that the service of the summons in this action be made upon the defendant, *Richard Roe*, by publication thereof in *The Daily Evening Bulletin*, a newspaper published at said *City and County of San Francisco*, hereby designated as the newspaper most likely to give notice to said defendant; that such publication be made at least once a week for *two months*.

And it further in like manner satisfactorily appearing to me that the residence of said defendant *is known to be at the City of Dubuque*, in the County of *Dubuque*, State of *Iowa*, it is ordered and directed that a copy of the summons and complaint in this suit be forthwith deposited in the United States Post Office, at the *City and County of San Francisco*, postpaid, directed to said defendant, at his said place of residence.

(Dated and signed.)

NOTE.—See No. 536 and notes.

### No. 916.—Order for Notice of Application to Disincorporate.

[TITLE OF COURT AND CAUSE.]

On reading the petition of the *Metropolitan Gas Company* for disincorporation of said company, and praying, among other things, that a time and place be fixed for the hearing of said petition, and that the Clerk of this Court be directed to publish notice thereof and of the nature of said application: Now, on the motion of *W. H. L. Barnes*, attorney for said petitioners, it is ordered said petition be filed with the Clerk of this Court, and that *Friday, the twelfth day of September, 1894*, at the opening of the Court on that day, or as soon thereafter as counsel can be heard,

at the court-room of this Court, in the City Hall of the *City and County of San Francisco*, State of *California*, be, and the same are hereby fixed as the time and place for the hearing of said petition, and the Clerk is directed to cause publication thereof, and of the nature of the application in said petition made, to be published not less than *thirty* nor more than *fifty* days preceding said date, in the *Daily Evening Bulletin*, a newspaper published in said *city and county*.

(Dated and signed.)

NOTE.—See No. 929 and note.

### No. 917.—Order for Arrest of Insane Person.

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,  
*City and County of San Francisco*. } ss.

The People of the State of *California*, to the Sheriff or any Constable or Policeman, of said *city and county*:

A complaint, under oath, having this day been made before me, setting forth that a person by the name of *Robert Roe*, by reason of insanity, is dangerous to be at large, you are therefore commanded, forthwith, to arrest the above named *Robert Roe*, and bring him before me, at the court-room of the said Superior Court, at the City Hall, in said *City and County of San Francisco*, on *Monday*, the *twenty-ninth* day of *March*, 1894, at ten o'clock A. M. of said day.

Witness, etc.

### No. 918.—Objections to Dissolution of Corporation.

[TITLE OF COURT AND CAUSE.]

Now comes *William Feely*, a claimant for damages and a creditor of said "*Metropolitan Gas Company*," and files his objections to the application of said company to dissolve.

The objection is, that all claims and demands against said corporation have not been satisfied and discharged, and particularly the claim of him, the said *Feely*, for damages, has not been satisfied or discharged, and an action at law has been commenced by him, the said *Feely*, to recover said damages, to wit: the sum of *fifteen thousand* dollars, for injuries received through the default and negligence of said corporation, which occasioned an explosion of gas, and consequent damage to said *Feely*, as set forth in the complaint in said action, which has been served upon the defendant; and said action is now pending in the Superior Court of the *City and County of San Francisco*, State of *California*.

Wherefore, this objector prays that said petition may be denied.  
 (Dated and signed.)

NOTE.—See No. 929 and note.



**No. 919.—Order Directing Examination of Debtor.**

[TITLE OF COURT AND CAUSE.]

STATE OF *California*,        }  
                   County of *Napa*. } ss.

On reading the foregoing affidavit, and it satisfactorily appearing to me therefrom that *O. P. S.*, the defendant in the above-entitled action, has property which he unjustly refuses to apply toward the satisfaction of the judgment in said action; and that it is a proper case for this order, and on application of the plaintiff's attorney, I, the undersigned, do hereby order and require the said defendant, *O. P. S.*, personally to be and appear before [stating before whom and the time and place], at ten o'clock in the forenoon of that day, to answer concerning his property, and that a copy of said affidavit and of this order be previously served upon said defendant at least five days prior to said tenth day of *June* [or other time].

(Dated and signed.)

NOTE.—See No. 526 and notes.

**No. 920.—Order for Defaulting Juror to Show Cause.**

[TITLE OF COURT AND CAUSE.]

The People of the State of *California*, to *Henry Jones*, Greeting:

You are hereby commanded to be and appear before the Superior Court of the County of *San Mateo*, State of *California*, at the court-room of said Court, in the court-house, on Monday, the twenty-fifth day of *January*, 1894, at ten o'clock A. M., then and there to show cause why you should not be punished for contempt, in failing to attend the said Court as a juror.

Witness, etc.

**No. 921.—Order for Writ of Assistance.**

[TITLE OF COURT AND CAUSE.]

On reading and filing the affidavit of *James Wilson*, setting forth that he was the purchaser of the premises described in the complaint herein; that he has presented to the defendant, *Richard Roe*, the Sheriff's deed for said property, and demanded possession thereof, and that said defendant has refused to deliver to him possession of said premises; and it appearing that due notice has been given of this motion to *Stow & Brown*, the attorneys of said defendant: Now, on motion of *Scrab & Scab*, attorneys of said *Wilson*, it is ordered that a writ of assistance issue to the Sheriff of *San Mateo* County, to put the said *James Wilson* in possession of the said premises, and him in the possession thereof, from time to time, to maintain and defend.

(Dated and signed.)

**No. 922.—Order Reciting a "Contempt" in View of Judge.**

[TITLE OF COURT AND CAUSE.]

Whereas, during the trial of the above entitled action in this Court, at *Downieville, Sierra County, State of California*, on the *third day of January, 1894*, before the undersigned, a Judge of said Superior Court, *H. S.*, a witness, was under examination on the part of plaintiff, and while said witness was giving his evidence, *F. Anderson, Esq.*, the attorney for defendant, objected to the testimony then being given by said witness, on the ground that said witness was stating facts not within his own knowledge, the same being hearsay, which objection the Court sustained; whereupon, *S. Davidson, Esq.*, the attorney for plaintiff, shook his finger at the undersigned, and, with a low bow, stated, in a sneering manner, that the undersigned evidently knew more law than *Blackstone*, and that the bar of the State of California would take it kindly if the undersigned would condescendingly write a treatise on evidence; for which conduct I then and there, and do now, adjudge the said *S. Davidson* guilty of contempt, and I order him to pay a fine of *five hundred dollars*, and to be imprisoned one day in the County Jail of said County of *Sierra*.

(Signed and dated.)

NOTE.—See No. 543 and notes.

**No. 923.—Order to Show Cause why Punishment for Contempt should not be Inflicted.**

[TITLE OF COURT AND CAUSE.]

On reading and filing the affidavit of *G. B.*, charging *H. S.* with contempt of this Court, and sufficient cause appearing therefor, it is ordered that the said *H. S.* be and appear before me, at the court-house in *Downieville*, in said county, on *Monday, May 12, 1895, at ten o'clock A. M.*, to show cause why he should not be punished as for contempt, as in said affidavit alleged. It is ordered that a copy of said affidavit, and of this order, be served on the said *H. S.* at least *five days* before the said *twelfth day of May*.

Witness, etc.

NOTE.—See No. 543 and notes.

**No. 924.—Order—Conviction of Contempt.**

[TITLE OF COURT AND CAUSE.]

Whereas, [after reciting the facts, as in the affidavit and order for examination, and the affidavit charging disobedience of the order], and that an examination of the charge was made in presence of the accused; it is therefore ordered that the said *H. S.* be, and he is, adjudged guilty of contempt, in disobeying the lawful order of his Court, as aforesaid (having the power to obey said order), and it is adjudged that the said *H. S.* be imprisoned in the County Jail of said County of *Sierra* until he complies with such order.

Witness, etc.

NOTE.—See No. 543 and notes.

**No. 925.—Order Dismissing Charge of Contempt.**

[TITLE OF COURT AND CAUSE.]

In the matter of proceedings against *H. C.*, for contempt.

The said *H. C.* having this day purged himself of the charge of contempt, preferred against him by *J. B.*, Constable, it is ordered that the said *H. C.* be, and he is, acquitted of said charge, and he is hereby discharged from arrest.

Witness, *etc.*

**No. 926.—Petition by a Church to Mortgage Property.**

## PETITION.

To the Honorable the Superior Court of the *City and County of San Francisco*, State of *California*:

Your petitioners, "*The Trustees of the Narrow Path Church, of the City and County of San Francisco*," in the said State of *California*, respectfully represent: That they are a religious corporation, duly incorporated according to the provisions of the laws of this State, under the corporate name of "*The Trustees of the Narrow Path Church, of the City and County of San Francisco*."

That they are seized and possessed, as such trustees as aforesaid, of certain real estate situated in said *City and County of San Francisco*, bounded and described as follows, viz.:

[Description.]

That *Peter D. Smith, John L. Jones, and Jabez Brown*, are the present trustees of said church, and compose said corporation; and that *Peter D. Smith* is President, and *John L. Jones* Secretary of said Board of Trustees.

That there is erected and now standing and being upon said lot, a large and valuable building, used by said church, and the congregation connected therewith, for stated meetings for religious worship.

That the said corporation is now indebted in the sum of about *five thousand dollars*, which indebtedness has been contracted for the improvement of said property, and the benefit of said church and congregation.

That the immediate necessities of said church and corporation require that said trustees should have at their disposal, for the meeting of the necessities of said church and congregation, the sum of *five thousand dollars*.

That they have no money whatever on hand belonging to said corporation.

That the current receipts are about sufficient to meet the current expenses of said church, and the interest on the sum of *five thousand dollars*, at the rate of *one per cent. per month*.

That they can procure the said sum of *five thousand dollars* for the period of *one year*, with the privilege of continuing the



same for *two* years, at the rate of *one* per cent. per *month* interest, and that your petitioners are unable to obtain the same at any less rate of interest, or on any more favorable terms than above named.

That at a meeting of the said church and congregation, held at the meeting-house of said church, on the *twenty-third* day of *September*, 1894, a resolution was adopted by a unanimous vote of the members present, directing your petitioners to effect a loan not exceeding *five thousand dollars*, for the purposes above named. That said meeting at which said resolution was adopted was duly called, and notice thereof given from the pulpit on the preceding Sabbath for that special purpose.

And that it would be for the benefit, interest, and advantage of said church and congregation that said loan should be made, and said note and mortgage executed.

Wherefore, your petitioners pray that an order may be made by this Court for the mortgaging of said real estate to secure the payment of such loan, not exceeding *five thousand dollars*, as said corporation can effect for the period of *one* year or longer, not exceeding *two* years, at a rate of interest not exceeding *one* per cent. per *month*; and also allowing said corporation trustees as aforesaid to make and deliver with said mortgage a promissory note, under the corporate seal and in the corporate name of said corporation, for the said sum so obtained as aforesaid, to any person furnishing said sum of money as aforesaid.

(Dated, signed, and verified.)

NOTE 1.—In California any number of persons may incorporate for any purpose, where pecuniary profit is not their object, and for which individuals may lawfully associate themselves. (This note refers only to what is known as religious corporations and corporations not organized for profit.)

Corporations of this character may mortgage or sell real property held by them, upon obtaining an order for that purpose from the Superior Court held in the county in which the property is situated. Before making the order, proof must be made to the satisfaction of the Court that notice of the application for leave to mortgage or sell has been given by publication in such manner and for such time as the Court or the Judge has directed, and that it is to the interest of the corporation that leave should be granted as prayed for. The application must be made by petition, and any member of the corporation may oppose the granting of the order by affidavit or otherwise. Civil Code, secs. 593-98.

NOTE 2.—In Nevada the same, except the Court may direct the application of the money received to such uses as it and the trustees may deem for the benefit of the corporation. Gen. Stats., secs. 1023, 1032.

NOTE 3.—In Idaho the same as in California. Rev. Stats., secs. 2760, 2764.

NOTE 4.—In Montana they may deal with property the same as other corporations, without restriction. C. C., sec. 393.

NOTE 5.—In Utah the same as in Montana. Comp. Laws, sec. 2271, p. 4.

NOTE 6.—In North and South Dakotas the same as in Montana. Comp. Laws, sec. 145.

NOTE 7.—In Wyoming the same as in Montana, provided the by-laws give power to buy or sell property. Rev. Stats., sec. 575.

NOTE 8.—In Washington the same as in Montana. Hill's Stats., secs. 1638-42, vol. 1.

NOTE 9.—In Oregon the same as in Montana. Hill's Laws, sec. 3308, p. 1462.

NOTE 10.—In Arizona the same as in California. Rev. Stats., secs. 332-35.

NOTE 11.—In Colorado the same as in Montana. Mills' Stats., sec. 647.

## No. 927.—Petition of Sole Trader.

[TITLE OF COURT AND CAUSE.]

1. The petition of *Amelia Jones* respectfully represents and shows to this Honorable Court that she is a married woman, and is the wife of *Thomas Jones*, and is now, and for six months and upwards next preceding the *thirtieth* day of *September, 1894*, has been residing with her said husband in said *City and County of San Francisco, State of California*.

2. That your petitioner is desirous of availing herself of the benefits of Title XII., Part III. of the Code of Civil Procedure of the State of California, and obtain a judgment and order of this Court, authorizing her to carry on and transact business in her own name and on her own account, in the *City and County of San Francisco*.

3. That your petitioner makes this application in good faith, to enable her to support herself and others dependent upon her, viz.: her *five* children; and that the following are the names of her children and the persons dependent upon her for their support and maintenance: *Alfred Jones*, aged *fourteen* years; *Walter Jones*, aged *twelve* years; *Frederick Jones*, aged *ten* years; *Amelia Jones*, aged *eight* years; *Ernest Jones*, aged *five* years.

4. The reason of insufficient support from her said husband is as follows: *Her said husband is sickly, and troubled with a chronic disease, to wit: "Hemorrhoids," which renders him unfit to work at his trade a great part of the time, he being a pile driver by trade.*

5. That the reason a divorce is not sought by your petitioner from her husband is as follows: *There is no legal ground for a divorce.*

6. The nature of the business your petitioner proposes to conduct and carry on, is that of *buying and selling goods, wares, and merchandise, and keeping a general variety store*, and the place of such business is in *the City and County of San Francisco*, and the capital to be invested therein by your petitioner is *three hundred* dollars, and the source from which the same is derived is as follows: *Money loaned on mortgage security by your petitioner of one Richard Worth.*

7. That of the moneys to be used in said business, not more than five hundred dollars, has come, either directly or indirectly, from the community property, or of the separate property of her husband, and that this application is not made with any view to defraud, delay, or hinder any creditor or creditors of her husband, but is made in good faith for the purpose of enabling her to support herself and children as aforesaid.

Wherefore, your petitioner prays that on the hearing of this petition and application, and after due notice given and published, a judgment and order be made by this Honorable Court authorizing her to carry on business in her own name, and on her own account, as such sole trader.

(Verified and signed.)

NOTE.—See Affidavits.



## No. 928.—Petition for Relief against Forfeiture of Lease.

[TITLE OF COURT AND CAUSE.]

To *R. B. E., Esq.*, Justice of the Peace, *Chancery Township, Siskiyou County, California.*

Your petitioner respectfully represents that on the *tenth* day of *August, 1894*, an action was commenced before your Honor, in said Court, entitled *W. B. v. S. S.*, your petitioner; that said action was brought to [*here insert the facts of the action stated in the complaint*]; that such proceedings were thereafter had that by the judgment of said Court, entered on the *twentieth* day of said month of *August*, the lease under which the petitioner held the premises described in the complaint was, by the judgment of said Court, declared forfeited, and petitioner was, on the day following, by the Sheriff of said county, and the order of said Court, turned out of said premises, and he, at the same time, placed said plaintiff in possession thereof; that the lease under which petitioner held said premises had *ten* years to run from said *tenth* day of *August*; that when plaintiff made demand for the rent of said premises, as described in the complaint, petitioner was absent from said premises, but his clerk, *Abraham Abstinant, Esq.*, was in possession as his agent; that the demand for rent or surrender of possession, described in the complaint and proved at the trial, was served on said agent at a time when petitioner was absent from the State of California on business; that said agent did not inform petitioner of said demand, and petitioner did not know that said demand had been made until after said action was commenced; that when he returned to said State this action had been commenced, and petitioner, before the trial, tendered to plaintiff the full amount due for rent and all the costs he had been put to, and fifty per cent. thereon in addition; that petitioner erected on said premises, under the terms of his lease, out-houses and a stable, costing over one thousand dollars, has put a new roof on the dwelling-house thereon at an expense of seven hundred dollars, and has sunk a well thereon, costing three hundred and twelve dollars; and all said expenditures have been made within one year last past, and under expectation of enjoying said premises until the expiration of said lease, as covenanted therein; that the forfeiture of said lease has worked a great hardship on petitioner, who is over seventy-eight years of age, and he avers that his entire fortune has been expended on said premises as aforesaid; that he has a wife and seven children, all under fifteen years of age, depending on him for support, and his entire family and furniture were, by said Sheriff, turned out of said premises on the street at the hour of ten o'clock P. M.;

Wherefore, petitioner prays that an order may be made restoring him to his former estate.

(Verified.)

NOTE.—Cal. C. C. P., sec. 1179.



**No. 929.—Petition for Dissolution of Corporation.**

[TITLE OF COURT AND CAUSE.]

To the Honorable the Superior Court of the *City and County of San Francisco, State of California.*

The petition of the *Metropolitan Gas Company* represents and alleges:

I. That it is a corporation duly incorporated on the *tenth* day of *October, 1894*, and is still existing, under and by virtue of the laws of the State of *California*, and that its principal place of business is in the *City and County of San Francisco.*

II. That at a meeting of the stockholders and members of said corporation, held for such purpose, the dissolution of said corporation was resolved upon by over two-thirds ( $\frac{2}{3}$ ) vote of all the stockholders and members of said corporation.

III. That all claims and demands against said corporation have been fully satisfied and discharged.

IV. That the total number of shares of the capital stock of said corporation is *ten thousand (10,000)*. That *nine thousand two hundred and fifty* shares of the said capital stock of said corporation was duly represented at said meeting, called as aforesaid, at the office of said company, in said *city and county*, for the purpose of the dissolution of said corporation, on the *ninth* day of *June, 1894*, and that the vote of all the stockholders at said meeting was as follows: *nine thousand one hundred and seventy-five* shares represented by stockholders as aforesaid, were for dissolution, and *seventy-five* shares were against dissolution.

V. That the Board of Directors or Trustees of said corporation consists of *five*, all stockholders thereof, and residents of said *City and County of San Francisco*, and their names are as follows: *John Ross, Robert Smith, John Jones, Peter Brown, and Seth Ross*, and that said persons so named as Trustees aforesaid, have had the sole management of the affairs of said corporation for *ten* months next preceding this application, and are now such managers.

Wherefore, your petitioners pray that your Honor will order this petition to be filed with the Clerk of this Court, and that the Clerk give notice of the nature of this application, not less than *thirty* nor more than *fifty* days, and of the time and place of hearing the same, by publication in some newspaper published in the *City and County of San Francisco*. That after the time of publication has expired your Honor may, upon *five* days' notice to any persons who have filed objections within the time prescribed by *Sec. 1231, C. C. P.*, or without notice, if no objections have been filed, proceed to hear and determine this application, and after hearing adjudge and declare said corporation dissolved, in accordance with the law in such cases made and provided.

(Dated and signed.)

NOTE.—This petition can be used at all places where corporations are formed by general law.

**No. 930.—Satisfaction of Judgment.**

IN THE SUPERIOR COURT of the County of *Sierra*, of the State of *California*.

*W. J. Strong,* }  
v.  
*A. Brown.* }

For and in consideration of *one thousand dollars gold coin* of the United States, to me paid by *A. Brown*, the *defendant* in the above entitled action, full satisfaction is hereby acknowledged of a certain judgment rendered in said Superior Court, in the said action, on the *twentieth* day of *June, 1894*, in favor of *Wm. J. Strong*, the *plaintiff* in the said action, and against the said *defendant*, for the sum of *one thousand dollars, gold coin* of the United States, *thirty-one* dollars costs and disbursements, and recorded in *Book twenty-nine of Judgments, at page 372*. And I hereby authorize and direct the Clerk of said Court to enter satisfaction of record of said judgment in the said action.

(Dated and signed.)

**No. 931.—Stipulation to Take Deposition of Witness.**

[TITLE OF COURT AND CAUSE.]

It is hereby stipulated, that the deposition of *Roland Cashel*, a witness on behalf of the *plaintiff* in the above entitled action, may be taken before *Mark Smith*, a Notary Public in and for the *City and County of Sacramento*, in this State, at his office in said *city and county*, on the *sixth* day of *June, 1894*, between the hours of *nine A. M.* and *six P. M.* of that day, and if not completed on that day, may be continued from day to day *successively* thereafter, and over *Sundays*, at the same place, until completed. [And when so taken, the said deposition may be used on the trial of said action, subject to the same objection (except as to the form of interrogatories), as if the said witness were there personally present and testifying therein.]

(Dated and signed.)

**No. 932.—Subpoena.**

[TITLE OF COURT AND CAUSE.]

The People of the State of *California*, send Greeting to *John Smith, and Laura D. Jones* :

We command you, that all and singular business and excuses being laid aside, you appear and attend before our said Superior Court of the *City and County of San Francisco*, State of *California*, at a session of said Court to be held at the court-room of said Court [*Department No. 1*], in the *New City Hall*, in said *City and County of San Francisco*, on the *twenty-first* day of *December, 1894*, at *ten o'clock A. M.*, then and there to testify in the above stated cause, now pending in said Superior Court, on the part of the

*plaintiff*; and for a failure to attend you will be deemed guilty of contempt of Court, and liable to pay all losses and damages sustained thereby to the parties aggrieved, and forfeit *one hundred* dollars in addition thereto.

Witness, *etc.*

### No. 933.—Subpœna—Affidavit of Service.

[TITLE OF COURT AND CAUSE.]

*George W. Taylor*, of said city and county, being duly sworn, says, that he served the within subpœna, by showing the said within original to each of the following persons named therein, and delivering a true copy thereof to each of the said persons, personally, on the *twentieth* day of *December, 1894*, at the *City and County of San Francisco*, to wit: *Laura D. Jones*, who did not demand fees, and *John Smith*, who demanded and received his fees—*two* dollars.

(Subscribed and sworn to.)

### No. 934.—Subpœna—Certificate of Service.

[TITLE OF COURT AND CAUSE.]

I hereby certify that I served the within subpœna by showing the said within original to each of the following persons named therein, and delivering a true copy thereof to each of the said persons personally, on the *twentieth* day of *December, 1894*, at the *City and County of San Francisco*, to wit: *Laura D. Jones*, who did not demand fees, and *John Smith*, who demanded and received his fees—*two* dollars.

(Dated and signed.)

*Fees, \$1.00.*

*Service, \$2.00.*

*Mileage, \$25.00.*

### No. 935.—Subpœna Duces Tecum.

[TITLE OF COURT AND CAUSE.]

The People of the State of *California* send Greeting to *Cyrus Jones*:

We command you, that all and singular business and excuses being laid aside, you appear and attend before our said Superior Court of the *City and County of San Francisco*, State of *California*, at a session of said Court to be held at the New City Hall, in the *City and County of San Francisco*, on the *second* day of *December, 1894*, at *ten o'clock A.M.*, then and there to testify in the above stated cause, now pending in said Superior Court, on the part of the defendant; and, for a failure to attend, you will be deemed guilty of a contempt of Court, and liable to pay all losses and damages sustained thereby to the parties aggrieved, and forfeit *one hundred* dollars in addition thereto; and that you bring with



you and produce, then and there, *a certain book, being the [here describe the book or paper, so that the witness cannot mistake it],* now in your custody.

Witness, *etc.*

### No. 936.—Summons—General.

[TITLE OF COURT AND CAUSE.]

The People of the State of *California* send Greeting to *Robert K. Anderson*, defendant:

You are hereby required to appear in an action brought against you by the above named plaintiff, in the Superior Court of the *City and County of San Francisco*, State of *California*, and to answer the complaint filed therein, within *ten* days (exclusive of the day of service), after the service on you of this summons—if served within this county; or, if served elsewhere, within *thirty* days—or judgment by default will be taken against you, according to the prayer of said complaint.

The said action is brought to *recover the sum of three hundred and seventy-eight dollars and fifty cents, gold coin of the United States, with interest thereon at the rate of one and one quarter per cent. per month, alleged to be due from defendant to plaintiff, upon a certain promissory note set out in the complaint on file in this cause, to which reference is hereby made for further information, and costs of suit.*

And you are hereby notified that if you fail to appear and answer the said complaint, as above required, the said plaintiff will take judgment against you for said sum of three hundred and seventy-eight dollars and fifty cents, gold coin of the *United States*, with interest as aforesaid, and costs.

Given under my hand and seal, *etc.*

#### INDORSEMENT.

OFFICE OF THE SHERIFF,  
Of the *City and County of San Francisco.* } ss.

I hereby certify that I received the within summons on the *sixth* day of *October, 1894*, and personally served the same on the *eighth* day of *October, 1894*, on *Robert K. Anderson*, being the defendant named in said summons, by delivering to and leaving with said defendant personally, in the *City and County of San Francisco*, a copy of said summons, attached to a true and correct copy of the complaint in the action.

(Dated and signed.)

(See No. 535 and notes.)

NOTE 1.—In California the summons is directed to the defendant, signed by the Clerk, under the seal of the Court, and must contain—

1. The names of the parties to the action, the Court in which it is brought, and the county in which the complaint is filed;
2. A statement of the nature of the action in general terms;
3. A direction that the defendant appear and answer within ten days, if served within the county in which the action is brought; within thirty days, if served elsewhere;

4. In an action arising on contract, for the recovery of money or damages only, a notice that unless the defendant so appears and answers, the plaintiff will take judgment for the sum demanded [stating it];

5. In other actions, a notice that unless defendant so appears and answers, the plaintiff will apply to the Court for the relief demanded. The name of the plaintiff's attorney must be indorsed on it. C. C. P., sec. 407.

NOTE 2.—In Nevada the same, except that paragraph 2 is: "The cause and general nature of the action." The time to answer is: If served in the county, within ten days; if served out of the county, but in the district in which the action is brought, twenty days; in all other cases, forty days. Referring to the second division, it is manifest that if the word "cause" is construed as it is in pleadings, the entire cause of action should be set out in the summons. Gen. Stats., secs. 3047-48.

NOTE 3.—In Idaho the same as in California, except the time to answer is the same as in Nevada. Rev. Stats., secs. 4140-41.

NOTE 4.—In Montana there is a statutory form:—

"[TITLE OF COURT AND CAUSE.]

"To the above named defendant: You are hereby summoned to answer the complaint in this action, which is filed in the office of the Clerk of this Court, a copy of which is herewith served upon you, and to file your answer and serve a copy thereof upon the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear and answer, judgment will be taken against you by default for the relief demanded in the complaint.

"Witness," etc. C. C. P., sec. 632.

NOTE 5.—In Utah the same as in Idaho. Comp. Laws, secs. 3204-5.

NOTE 6.—In North and South Dakotas the summons is issued and subscribed by the plaintiff or his attorney, and directed to the defendant, requiring him to answer the complaint (on file), and to serve a copy of his answer on the person signing the summons, at a place (in the State) to be therein specified, in which there is a post office, within thirty days after service, exclusive of the day of service. The plaintiff must insert in the summons the same notice as in an action on contract to recover money; that he will take judgment for a sum stated, if defendant fails to answer the complaint within thirty days. In other cases, the same as in paragraph 5 in California. Comp. Laws, secs. 4893-94.

NOTE 7.—In Wyoming the summons is issued by the Clerk. It is directed to the Sheriff of the county, and dated the day it issues. It commands the Sheriff to notify the defendant that he has been sued and must answer the petition (complaint) at the time specified in the petition, or the petition will be taken as true, and judgment entered accordingly; and if the action is to recover money only, there must be indorsed on the writ the amount to be specified in the *precipe*, for which, with interest, judgment will be taken, if answer is not made.

When the time for answer is not fixed by statute, the summons is returnable the second Monday after its date; but when it is issued to any other county, it may be made returnable, at the option of the plaintiff, on the third or fourth Monday after its date, and the day of the month on which it is returnable must be stated in it. Rev. Stats., secs. 2124-26.

NOTE 8.—In Washington the same as in Wyoming, and in statutory form, as follows:

"[TITLE OF COURT AND CAUSE.]

"The State of Washington to the said defendant: You are hereby summoned to appear within twenty days after the service of this summons, exclusive of the day of service, and defend the above entitled action in the Court aforesaid; and in case of your failure to do so, judgment will be rendered against you, according to the demand of the complaint, which will be filed with the Clerk of said Court, and a copy of which is herewith served upon you."

(Signed by plaintiff's attorney.)

P. O. address, ——— County, Washington.

Laws 1893, pp. 407-8.

NOTE 9.—In Oregon the same as in Dakota. If served in the county, the answer must be served within ten days; if served elsewhere, within twenty days. Hill's Laws, secs. 52-53, p. 174.

NOTE 10.—In Arizona the same as in Nevada. If served in the county, answer must be served within ten days; out of the county, but in the district, twenty days; in all other cases, thirty days. Rev. Stats., sec. 696.

NOTE 11.—In Colorado the summons may be signed either by the Clerk or by the attorney for plaintiff. It shall state the parties, the State and county, and require the defendant to appear and answer within twenty days, if served in the same county; if served out of the county, or by publication, then within thirty days.

The statutory form is as follows:

"[TITLE OF COURT AND CAUSE.]

[On the margin of the summons at the right of the title outside of the brackets:]

"The practitioner will here insert brief statement of his cause of action in conformity with the amendment of 1899."

"The People of the State of Colorado to the defendant above named, Greeting: You are hereby required to appear in an action brought against you by the above named plaintiff, in the ——— Court of ——— County, State of Colorado, and answer the complaint

therein within twenty days after the service hereof, exclusive of the day of service, or judgment will be taken against you, according to the prayer of the complaint.

"Given under my hand this — day of —, A. D. 1888." C. P., secs. 84-85.

### No. 937.—Summons—Unlawful Detainer.

[TITLE OF COURT AND CAUSE.]

The People of the State of *California* send Greeting to *Wm. Hamersmith*, defendant:

You are hereby required to appear in an action brought against you by the above named *plaintiff* in said Superior Court, *City and County of San Francisco*, State of *California*, and to answer the complaint filed therein, on *Monday*, the *fourteenth* day of *July*, *1894*, at the hour of *ten o'clock A. M.*, of that day, or judgment by default will be taken against you, according to the prayer of said complaint.

The said action is brought to recover possession of those certain premises described in the complaint (to which reference is hereby made), and also for the sum of *one hundred* dollars, *U. S. gold coin*, rents due, the same to be trebled, and for costs of suit.

And you are hereby notified that if you fail to appear and answer the said complaint, as above required, the said *plaintiff* will apply to the Court for the relief therein demanded.

And it is directed that this summons be served on the *defendant* herein, on or before the *eleventh* day of *July*, *A. D. 1894*, and that said summons be returned on the *fourteenth* day of *July*, *A. D. 1894*.

Given under my hand and seal of the said Superior Court, *City and County of San Francisco*, State of *California*, this *tenth* day of *July*, in the year of our Lord, one thousand eight hundred and *ninety-four*.

(Sealed, dated, and signed by Clerk.)

### No. 938.—Summons—On Foreclosure of Mortgage.

[TITLE OF COURT AND CAUSE.]

The People of the State of *California* send Greeting to *Michael Sweeney*, administrator of the estate of *John Sweeney*, deceased, *Michael Sweeney*, *Mary Sweeney*, *Mrs. Mary J. Phillips*, *Frank Sweeney*, *Charles Lux*, *Paul Neumann*, *J. S. Jones*, *John Doe*, and *Richard Roe*:

You are hereby required to appear in an action brought against you by the above named *plaintiff* in the Superior Court, *City and County of San Francisco*, State of *California*, and to answer the complaint filed therein within *ten* days (exclusive of the day of service) after the service on you of this summons—if served within this county; or, if served elsewhere, within *thirty* days—or judgment by default will be taken against you, according to the prayer of said complaint.



The said action is brought to obtain a decree of this Court for the foreclosure of a certain mortgage, described in the complaint and executed by the said *John Sweeney, now deceased, and Mary Sweeney*, on the *fifteenth day of September, 1874*, to secure the payment of a certain promissory note made by them to plaintiff on the same day for \$6000, gold coin, described in the complaint herein, and which, by non-payment of interest, has become due, and alleging that all said note has been paid except \$5,628.48, and which sum is due, with interest at 11-12 of one per cent. per month from February 5, 1878. Also, \$117.42 paid for taxes, with interest at two per cent. per month from March 22, 1879. Also, \$86.35 paid for taxes, with interest at two per cent. per month from December 30, 1879. Also, \$100.68 paid for taxes, with interest at two per cent. per month from December 20, 1880. Also, \$80 paid for insurance, with interest at two per cent. per month from October 10, 1880. Also, \$123.16 paid for street assessment, with interest at two per cent. per month from March 26, 1879. Also, \$354 paid to the estate of *Alexander Carter, deceased*, with interest at two per cent. per month from January 25, 1879; that the premises conveyed by said mortgage may be sold and the proceeds thereof applied to the payment of said note, moneys expended by plaintiff as aforesaid, and costs of suit. For further particulars reference to the complaint on file is hereby made, and in case such proceeds are not sufficient to pay the same, then to obtain an execution against said *Mary Sweeney* for the balance remaining due, and also that the said defendants, and all persons claiming by, through, or under them, may be barred and foreclosed of all right, title, claim, lien, equity of redemption, and interest in and to said mortgaged premises, and for other and further relief.

And if you fail to appear and answer said complaint as above required, the plaintiff will take default against you and apply to the Court for relief demanded in the complaint.

Given under my hand and seal, etc.

#### **No. 939.—Summons—Statement of Cause of Action on Promissory Note.**

The said action is brought to recover the sum of ten thousand dollars, due from defendants to plaintiffs, upon a certain promissory note, set out and described in the complaint filed in this cause, to which reference is here made, with interest on said sum from the sixth day of September, 1894, at the rate of ten per cent. per year, amounting to the sum of one hundred and twenty-five dollars, and also for accruing interest, besides costs of suit.

And you are hereby notified, that if you fail to appear and answer the said complaint, as above required, the said plaintiffs will take judgment against you for said sum of ten thousand dollars, interest as aforesaid, and costs.

**No. 940.—Summons—Statement of Cause of Action for Money Loaned and Advanced.**

The said action is brought to recover the sum of *six hundred* dollars, with interest thereon from the *twenty-first* day of *January*, 1894, at the rate of *one and one-half* per cent. *per month*, due from *defendant to plaintiff*, for so much money loaned and advanced by *plaintiff to defendant*, as set out in the complaint on file herein, to which reference is here made, and costs of suit.

And you are hereby notified, that if you fail to appear and answer the said complaint, as above required, the said plaintiff will take judgment against you for said sum of *six hundred* dollars, interest as aforesaid, and costs.

**No. 941.—Summons—Statement of Cause of Action for Payment of Proceeds of Sale.**

The said action is brought to recover from you the sum of *twenty-two thousand five hundred* dollars, in *gold coin* of the United States, being proceeds of the sale made by you of *six hundred* shares of the capital stock of the *Daney Gold and Silver Mining Company*, which, by your agreement with plaintiff, you are bound to pay over to him, as will more fully appear by the complaint on file herein, to which reference is here made, and also interest thereon.

And you are hereby notified, that if you fail to appear and answer the said complaint, as above required, the said plaintiff will take judgment against you for said sum of *twenty-two thousand five hundred* dollars, with interest, payable in *gold coin* of the United States.

**No. 942.—Summons Statement of Cause of Action on an Account Stated, and for Money Loaned, and Goods Sold.**

The said action is brought to recover of you the sum of *ten hundred and seventy-five and thirty-five one-hundredths* dollars, with interest thereon from the *sixth* day of *November*, 1894, as on account stated, between you and the plaintiff, and for money loaned, and for goods sold and delivered to and at your request, as will more fully appear by complaint on file herein, to which reference is here made.

And you are hereby notified, that if you fail to appear and answer the said complaint, as above required, the said plaintiff will take judgment against you for the sum of *ten hundred and seventy-five and thirty-five one-hundredths* dollars, interest, and costs of suit.

**No. 943.—Summons—Statement of Cause of Action for Commissions on Sales, Conversion of Proceeds of Sales, etc.**

The said action is brought to recover the sum of *sixteen thousand four hundred and fifty* dollars, and interest thereon at the



rate of seven per cent. per annum, being due from defendant to plaintiff for commissions on sales of certain goods, and for the conversion by the defendant to his own use of the proceeds of sales of certain goods and fixtures, the property of said plaintiff, and also for a certain lease, as particularly mentioned in the complaint on file in this action; also, for costs of suit.

And you are hereby notified, that if you fail to appear and answer the said complaint, as above required, the said plaintiff will apply to the Court for the relief therein demanded.

**No. 944.—Summons—Statement of Cause of Action for Street Assessments.**

The said action is brought to recover the sum of *one thousand two hundred and ninety-seven and seventy-two one-hundredths* dollars, with legal interest thereon from the date of the demand mentioned in the complaint, due from defendants to plaintiff, upon a certain street assessment, for work and labor done by plaintiff on Pine street, in front of property belonging to defendants, as will more fully appear by complaint on file herein, to which reference is here made, and for costs.

And you are hereby notified, that if you fail to appear and answer the said complaint, as above required, the said plaintiff will apply to the Court for the relief therein demanded.

**No. 945.—Summons—Statement of Cause of Action on Bond and Mortgage.**

The said action is brought to obtain a decree of this Court, that an account may be taken of what is due and owing to said plaintiff, for principal and interest on a certain bond and mortgage, described in said complaint, and that said defendant may be decreed to pay to the plaintiff what may be found to be due to him on taking the said account, together with his costs of this suit, or, in default thereof, that said defendant, and all persons claiming under him, may be absolutely debarred and foreclosed of and from all right and equity of redemption in certain premises, particularly described in said complaint, on file herein, to which reference is here made.

And you are hereby notified, that if you fail to appear and answer the said complaint, as above required, the said plaintiff will apply to the Court for the relief demanded in said complaint.

**No. 946.—Summons—Statement of Cause of Action to Quiet Title.**

The said action is brought to obtain a decree forever quieting the plaintiffs in their title and possession of the certain piece of land, described in the complaint, on file herein, to which reference is here made, against all claims thereto by the defendants, or either of them, or by any one claiming through or under them, after the commencement of this suit, and for costs of suit.



And you are hereby notified, that if you fail to appear and answer the said complaint, as above required, the said plaintiffs will apply to the Court for the relief demanded in the complaint.

**No. 947.—Summons—Statement of Cause of Action to Quiet Title—Another Form.**

The said action is brought to determine a claim made by said defendants adversely to the plaintiff, in and to that certain lot of land in the *City and County of San Francisco*, and *State of California*, and known as *one hundred vara lot number seventy-nine*, situated on the southerly corner of *Third and Harrison streets*, and being in front and rear, and in depth on each side, *two hundred and seventy-five feet*; to compel the said defendants to produce their title, if any they have, to said premises, and that the same, and the pretended claim, right, title, interest, and estate of said defendants, and each of them, in and to said premises, and every part thereof, may be adjudged and decreed to be invalid and void. That the said defendants, and each of them, may be barred of and from all right, title, interest, and estate in and to the said premises, and every part thereof. That the said plaintiff's title may be adjudged and decreed to be a good and valid one as against the said defendants, and each of them, and all persons claiming under the said defendants, and each of them, and for such other and further relief as shall be just and equitable, as the nature of the case may require, as will more fully appear by the complaint on file herein, to which reference is here made, and for his costs of suit.

And you are hereby notified, that if you fail to appear and answer the said complaint, as above required, the said plaintiff will apply to the Court for the relief demanded in the said complaint.

**No. 948.—Summons—Statement of Cause of Action for Partition of Lands.**

The said action is brought to obtain a decree from said Court that the property named in the complaint, being the rancho known as the *Rancho Laguna de San Antonio*, situated, lying, and being partly in the County of *Sonoma*, and partly in the County of *Marin*, *State of California*, known as the *Rancho Laguna de San Antonio*, bounded and described as follows:

[Description by metes and bounds.]

Containing *twenty-four thousand nine hundred and three acres*, be sold, and the proceeds of such sale be divided among the parties according to their respective rights and interests, in case the Court shall deem that a partition of the same cannot be made without great prejudice to the owners; but in case the Court shall deem that partition can be made without great prejudice to the owners, then that the Court order a partition of the same, according to the

*respective rights of the parties, as ascertained by the Court, and to appoint a referee or referees thereof, and to designate the portions to remain undivided, in case there shall appear to be owners whose interests remain unknown, or are not ascertained, and for such other and further relief as shall appear to the Court to be just and equitable in the premises.*

And you are hereby notified, that if you fail to appear and answer the said complaint, as above required, the said plaintiff will apply to the Court for the relief therein demanded.

**No. 949.—Summons—Statement of Cause of Action for Divorce.**

The said action is brought to obtain a decree *dissolving the bonds of matrimony heretofore and now existing between the plaintiff and defendant, for alimony and counsel fee*, as will more fully appear by the complaint on file herein, to which reference is here made, costs of suit, and general relief.

And you are hereby notified, that if you fail to appear and answer the said complaint, as above required, the said plaintiff will apply to the Court for the relief demanded therein.

**No. 950.—Summons—Statement of Cause of Action for Divorce—Another Form.**

The said action is brought to obtain a decree *dissolving the bonds of matrimony existing between the plaintiff and defendant, and giving to plaintiff the care, custody, and education of Susanna, daughter of said parties, and for general relief.*

And you are hereby notified, that if you fail to appear and answer the said complaint, as above required, the said plaintiff will apply to the Court for the relief therein demanded.

**No. 951.—Summons—Statement of Cause of Action for Divorce—Another Form.**

The said action is brought to obtain a judgment that the marriage between plaintiff and defendant be dissolved, and a divorce decreed, according to the statute in such case made and provided, and plaintiff prays *that the custody, control, and possession of the child, Emma Rafter, be adjudged to the plaintiff, and that pending this litigation, by an order of this Court, defendant be restrained and enjoined from taking or having the custody, control, or possession of said child.* The ground on which said judgment and decree are claimed is, that defendant has been for more than three years last past habitually intemperate and an habitual drunkard, as is fully set forth in the complaint on file.

And you are hereby notified, that if you fail to appear and answer the said complaint, as above required, said plaintiff will apply to the Court for the relief demanded in said complaint.

**No. 952.—Substitution of Attorney.**

[TITLE OF COURT AND CAUSE.]

I hereby substitute *Messrs. McAllister and Bergin* attorneys for the plaintiff in the above entitled action in my place and stead.

(Dated and signed.)

**No. 953.—Notice of Acceptance.**

[TITLE OF COURT AND CAUSE.]

You will please take notice hereby, that we accept the substitution of ourselves attorneys for the plaintiff in the above entitled action in your place and stead.

(Dated and signed.)

**No. 954.—Sureties—Justification of.**

STATE OF California, }  
City and County of San Francisco. } 38.

*Samuel Davis* and *Ferdinand Reis*, the sureties whose names are subscribed to the above undertaking, being severally duly sworn, each for himself, says, that he is a *resident and householder in said city [or State]* and county, and is worth the sum in the said undertaking specified as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

(Subscribed and sworn to.)

NOTE 1.—In California, in *all cases* where an undertaking, with sureties, is required by the provisions of this Code, the officer taking the same must require the sureties to accompany it with an affidavit that they are each *residents* and householders, or freeholders, within the *State*, and are each worth the sum specified in the undertaking, over and above all their just debts and liabilities, exclusive of property exempt from execution; but when the amount specified in the undertaking exceeds three thousand dollars, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties. C. C. P., sec. 1057.

NOTE 2.—In Nevada, where *official bonds* are required, the sureties must severally justify—

1. On a bond by a State officer, that he is a resident and freeholder, or householder within the State (of Nevada); and on a county officer's bond, that he is a resident and freeholder, or householder, within the county.

2. That he is worth double the amount for which he becomes surety, over and above all his debts and liabilities, in property situated within the State which is not exempt from execution. When the amount of the bond is more than \$2000 the sureties may become severally liable for portions not less than \$500, making in the aggregate at least two sureties for the whole sum. Gen. Stats., sec. 1748-49.

On *arrest*, the qualifications of plaintiff's sureties are the same as they are in all cases in California. *Id.*, sec. 3098. The defendant's sureties on discharge from arrest must be residents and householders, or freeholders, in the county, and each worth the amount named in the order of arrest, or the amount to which it is reduced, exclusive of exemptions. *Id.*, sec. 3110.

On *claim and delivery*, no qualifications are necessary for plaintiffs, except they become bound to the defendant in double the value of the property taken. *Id.*, sec. 3124. But if defendant retakes the property, his sureties must justify the same as on *arrest* and *bail*. *Id.*, sec. 3127. But, again, if any other person than plaintiff or defendant claims the property, he may take it by giving a bond, and his sureties must justify that they are worth double the value of the property, and are householders or freeholders in the county. *Id.*, sec. 3131. It will be noticed that in this instance the sureties need not be *residents*, etc. (Why, is not known outside of Nevada.) In undertaking on cost bonds, they must also be residents of the county. (Why? again.) *Id.*, sec. 3511. On injunction bonds and in contempt proceedings no qualifications are prescribed. *Id.*



secs. 3137, 3483. (A thicker muddle than the statutory provisions from which the foregoing is quoted cannot be equaled in the United States. It was the same in California until the statute quoted in Note 1 was passed.)

NOTE 3.—In Idaho the same as in California, except when the amount exceeds \$2000 the sureties may justify for less than the whole amount. Rev. Stats., sec. 4934.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 1899.

NOTE 5.—In Utah there is a general provision that sureties may in all cases be called upon to justify; but no general qualifications are given. Comp. Laws, secs. 3293, 3303.

On attachment and injunction no qualifications are prescribed. *Id.*

On arrest the same as in Nevada on arrest. Comp. Laws, sec. 3264.

On claim and delivery, the same as on arrest. Comp. Laws, sec. 3290.

On appeal the same as in California, except they need not be householders or freeholders, or residents, of the State or county. Comp. Laws, sec. 3637.

NOTE 6.—In North and South Dakotas, on *arrest and bail* the Court may accept the plaintiff as sole surety on his making an undertaking, and affidavit attached, that he is a resident and householder or freeholder in the State, worth double the sum, etc., the same as in California. Comp. Laws, secs. 4958-62. If plaintiff give an undertaking without sureties, no qualifications are required. *Id.*, sec. 4958.

On claim and delivery no qualifications are prescribed. *Id.*, secs. 4976-79.

In *attachment proceedings* the sureties must be residents and householders in the State. If the sureties are excepted to, they must justify as upon bail on arrest. *Id.*, sec. 5010. On *appeal*, the same as in California, except no limitation as to amount is provided for. *Id.*, sec. 5232.

NOTE 7.—In Wyoming all sureties must be residents of the Territory, and worth in the aggregate double the sum to be secured, beyond the amount of their debts, and have personal property liable to execution in the Territory equal to the sum to be secured. Rev. Stats., sec. 2343. And they may be required to justify, orally or in writing, to the amount of their property. *Id.*, sec. 2342.

NOTE 8.—In Washington, on *attachment*, the sureties must be, taken together, worth the sum specified in the bond in exempt property over and above the amount specified in the bond. Hill's Stats., sec. 293.

In all other proceedings where bonds or undertakings are necessary, such as *arrest, replevin, injunction*, etc., similar qualifications are necessary.

NOTE 9.—In Oregon the same as in California, except no attorney, or Sheriff, or Clerk of any Court, or other officer of any Court, shall become bail on *arrest*; and in all cases the sureties must be worth the amount specified in the writ of arrest. Hill's Laws, sec. 118, p. 255. In *replevin*, the same. *Id.*, sec. 138, p. 264. And generally the same in all other proceedings. In *appeal* bonds, the surety must make affidavit that he is a resident of the State, and is worth the sum stated over and above all his debts and liabilities in property within the State not exempt. Laws 1893, sec. 10, p. 124.

NOTE 10.—In Arizona no qualifications are made necessary by statute, but the officer may examine the persons offered, and if in his judgment they are sufficient, he approves the bond. Rev. Stats., secs. 2217-18.

NOTE 11.—In Colorado on attachment the surety must be worth the amount for which he becomes surety, above all his debts, in property in the State not exempt. C. P., sec. 95. In *replevin*, the qualifications are the same. *Id.*, sec. 84. And generally in all other cases the same.

## No. 955.—Undertaking on Appeal from Money Judgment.

[TITLE OF COURT AND CAUSE.]

Whereas, the defendants in the above entitled action have appealed to the Supreme Court of the State of *California* from a judgment made and entered against them in said action, in said Superior Court, in favor of the plaintiff in said action, on the *twenty-fourth* day of *January*, 1894, for *seven hundred and fifty* dollars, *gold coin* of the United States, and *fifty* dollars costs of suit, and from the whole thereof; and also from the order refusing said defendants a new trial, made and entered in the minutes of said Court, April 4, 1894.

Now, therefore, in consideration of the premises, and of such appeal, we, the undersigned, residents of the *City and County of San Francisco*, do hereby jointly and severally undertake and promise, on the part of the appellants, that the said appellants will pay all damages and costs which may be awarded against them on the appeal, or on a dismissal thereof, not exceeding *three*

*hundred* dollars, to which amount we acknowledge ourselves jointly and severally bound.

And whereas, the appellants are desirous of staying the execution of said judgment so appealed from, we do further, in consideration thereof, and of the premises, jointly and severally undertake and promise, and do acknowledge ourselves further jointly and severally bound in the further sum of *one thousand six hundred (1600)* dollars, *gold coin* of the United States (being double the amount named in the said judgment), that if the said judgment appealed from, or any part thereof, be affirmed, or the appeal be dismissed, the appellant will pay, in United States *gold coin*, the amount directed to be paid by the said judgment, or the part of such amount as to which the said judgment shall be affirmed, if affirmed only in part, and all damages and costs which may be awarded against the appellants upon the appeal; that if the appellants do not make such payment within *thirty (30)* days after the filing of the remittitur from the Supreme Court in the Court from which the appeal is taken, judgment may be entered on motion of the respondent, in his favor against the undersigned sureties, for said sum of \$800, together with the interest that may be due thereon, and the damages and costs that may be awarded against the appellant upon the appeal.

Witness our hands, *etc.*

(See No. 954 and notes.)

NOTE 1.—In California the undertaking on appeal must be in writing, on the part of the appellant, by at least two sureties, that the appellant will pay all damages and costs which may be awarded against him on the appeal, or on a dismissal thereof, not exceeding three hundred dollars; or that sum must be deposited with the Clerk with whom the judgment or order was entered, to abide the event of the appeal. C. C. P., sec. 941.

If the appeal be from a judgment or order directing the payment of money, it does not stay the execution of the judgment or order unless a written undertaking be executed on the part of the appellant, by two or more sureties, to the effect that they are bound in double the amount named in the judgment or order; that if the judgment or order appealed from, or any part thereof, be affirmed, or the appeal be dismissed, the appellant will pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order is affirmed, if affirmed only in part, and all damages and costs which may be awarded against the appellant upon the appeal, and that if the appellant does not make such payment within thirty days after the filing of the remittitur from the Supreme Court in the Court from which the appeal is taken, judgment may be entered on motion of the respondent in his favor against the sureties, for such amount, together with the interest that may be due thereon, and the damages and costs which may be awarded against the appellant upon the appeal. If the judgment or order appealed from be for a greater amount than two thousand dollars, and the sureties do not state in their affidavits of justification accompanying the undertaking that they are each worth the sum specified in the undertaking, the stipulation may be that the judgment to be entered against the sureties shall be for such amounts only as in their affidavits they may state that they are severally worth, and judgment may be entered against the sureties by the Court from which the appeal is taken, pursuant to the stipulations herein designated. When the judgment or order appealed from is made payable in a specified kind of money or currency, the judgment entered against the sureties upon the undertaking must be made payable in the same kind of money or currency. *Id.*, sec. 942.

NOTE 2.—In Nevada the same as in California, except the residence and occupation of the sureties must be stated, and the words "or the appeal be dismissed" omitted, and all that part providing for judgment against the sureties, on motion, is also omitted. Gen. Stats., sec. 3364.

NOTE 3.—In Idaho the same as in California. Rev. Stats., secs. 4802-90.

NOTE 4.—In Montana the same as in California. C. C. P., secs. 1725-26.

NOTE 5.—In Utah the same as in California. Comp. Laws, secs. 3637-38.

NOTE 6.—In North and South Dakotas the same as 1st in California, except all that part relating to the appeal being dismissed is omitted, also all relating to the entry of judgment on motion is omitted. Comp. Laws, sec. 5220.



**NOTE 7.**—In Wyoming the Supreme Court has no jurisdiction on appeals, except for errors appearing on the record and appeals are taken thereby summons and complaint the same as on commencement of action in the Court below. If execution on a money judgment is to be stayed, then an undertaking is given in double the amount of the judgment or order that plaintiff will pay the judgment (condemnation money) and costs if the judgment be offered in whole or in part. Rev. Stats., secs. 3131-36.

**NOTE 8.**—In Washington the bond in all cases must be not less than two hundred dollars. If the appeal is from final judgment for the recovery of money, the penalty must be double the amount of the judgment and costs; and in other cases not less than two hundred dollars, and such other sum as a Judge of the Superior Court prescribes. The condition in the bond is that the appellant will pay all damages and costs on appeal, or on dismissal, not exceeding the amount of the bond. A stay of proceedings is not had unless the bond or a subsequent one provides that the appellant will pay all damages and perform and satisfy the judgment if it is affirmed, and will perform any order, etc., which the Supreme Court may make or render, or order to be made or rendered, by the Superior Court, and, where such condition is applicable, shall pay all rents of or damage to property accruing during the pendency of the appeal, out of the possession of which the respondent shall be kept by reason of the appeal. If the bond is intended to stay proceedings on only a part of the judgment or order, it shall be worded so as to secure the part stayed alone. Laws 1893, sec. 7, p. 122.

**NOTE 9.**—In Oregon the undertaking is by one or more sureties, that the appellant will pay all costs, damages, and disbursements which may be awarded against him on appeal. If it is a money judgment, or for the recovery of personal property, or the value thereof, that the appellant will satisfy the judgment in so far as it is affirmed. If the judgment is for the recovery or possession of real property, or for partition, or to foreclose a mortgage on it, that the appellant will not suffer or commit waste, and, if the judgment be affirmed, that the appellant will pay the value of the use of the property so far as affirmed from the time of appeal until the delivery of possession, not exceeding the sum in the bond specified and fixed by the Court or Judge. If it be from a decree for the delivery of personalty, unless the things to be transferred or delivered be brought into Court, or placed in the custody of an officer or receiver appointed by the Court, that the appellant will obey the order of the Court. In such case the Judge fixes the amount of the bond.

If it be from a decree of foreclosure of any lien, and also against the person for the amount of the debt secured, the undertaking provides for the payment of any portion of the decree unsatisfied after the sale of the property upon which the lien is foreclosed.

If it be an order for the execution of an instrument, the appeal is not stayed unless the instrument is executed and deposited with the Clerk within the time allowed to file the undertaking, to abide the decree of the appellate Court. Hill's Laws, sec. 538. p. 479.

**NOTE 10.**—In Arizona cases are reviewed in the Supreme Court by writ of error and summons. The plaintiff or appellant in error gives a bond to the appellee, in double the probable amount of the costs in both Courts, to be fixed by the Court, conditioned that the plaintiff shall prosecute his appeal or writ with effect, and will pay all costs that may occur in the Supreme Court or in the Court below. This bond does not suspend the judgment of the Court below; but if it is desirable to suspend said judgment, a bond in double the amount involved and costs may be given, conditioned that the writ will be prosecuted with effect, and, if sustained, that appellant will perform the order of the Court, and pay all damages awarded; and, if the bond is invalid, that the appellant will pay the rent or hire of the property if the judgment is sustained. Rev. Stats., secs. 846-79.

**NOTE 11.**—In Colorado appeal is taken by writ of error, the same as in Arizona, and is only allowed when the judgment exceeds \$2500. Stats. 1891, p. 119. In other respects, the same as in Arizona, except there is no difference between money judgments and judgments relating to land or liens. The bond must be in a reasonable amount, sufficient to cover the amount of the judgment appealed from, and costs, and conditioned to pay the judgment, costs, and all damages awarded, and for the due prosecution of the appeal. C. P., sec. 388.

## No. 956.—Undertaking for Costs on Appeal.

[TITLE OF COURT AND CAUSE.]

Whereas, the plaintiff in the above entitled action is about to appeal to the Supreme Court of the State of California from a judgment rendered against him in said action, in the said Superior Court, and in favor of the defendant, for fifty dollars costs, and entered on the twentieth day of December, 1894.

Now, therefore, in consideration of the premises, and of such appeal, we, the undersigned, residents of the County of Alameda, and State of California, do hereby jointly and severally undertake



and promise, on the part of the appellant, that the said appellant will pay all damages and costs which may be awarded against him on the appeal, or on a dismissal thereof, not exceeding *three hundred* dollars, to which amount we acknowledge ourselves jointly and severally bound.

Witness our hands, *etc.*

[For justification of sureties, see No. 954.]

NOTE.—See notes to form Undertaking on Appeal from Money Judgment.

### No. 957.—Undertaking on Appeal—Real Property.

[TITLE OF COURT AND CAUSE.]

Whereas, *Richard Roe*, one of the *defendants* in the above entitled action, has appealed to the Supreme Court of the State of *California* from a judgment made and entered against him in the said action, in the said Superior Court, in favor of the plaintiff in said action, on the *third* day of *May*, 1894, for the recovery of the possession of certain lands and premises therein described, and *five hundred and thirty* dollars damages, for the detention thereof, and *one hundred and ten* dollars and *fifty* cents costs of suit.

Now, therefore, in consideration of the premises, and of such appeal, we, the undersigned, *John Sharon*, of the County of *Santa Barbara*, merchant, and *Paul Johnson*, of the said County of *Santa Barbara*, farmer, do hereby jointly and severally undertake and promise, on the part of the *appellant*, that the said *appellant* will pay all damages and costs which may be awarded against him on the appeal, or on a dismissal thereof, not exceeding *three hundred* dollars, to which amount we acknowledge ourselves jointly and severally bound.

And whereas, the *appellant* is desirous of staying the execution of the said judgment so appealed from, in so far as relates to the delivery of possession of the said land and premises, we do further, in consideration thereof, and of the premises, jointly and severally undertake and promise, and do acknowledge ourselves further jointly and severally bound in the further sum of *twelve hundred and eighty-one* dollars (being the amount for that purpose fixed by the Judge of this Court), that during the possession of such property by the *appellant* he will not commit, or suffer to be committed, any waste thereon, and that if the said judgment appealed from be affirmed, or the appeal dismissed, he will pay the value of the use and occupation of the property, from the time of the appeal until the delivery of possession thereof, not exceeding the said sum of *twelve hundred and eighty-one* dollars, so as aforesaid fixed by the Judge of this Court, by which the said judgment was rendered.

And whereas, the *appellant* is desirous of staying the execution of the said judgment so appealed from, we do further, in consideration thereof, and of the premises, jointly and severally under-

take and promise, and do acknowledge ourselves further jointly and severally bound in the further sum of *twelve hundred* dollars (being double the amount named in the said *judgment*), that if the said *judgment* appealed from, or any part thereof, be affirmed, or the appeal be dismissed, the *appellant* will pay, in *United States gold coin*, the amount directed to be paid by the judgment, or the part of such amount as to which the same shall be affirmed, if affirmed only in part, and all damages and costs which may be awarded against the *appellant* upon the appeal; and that if the *appellant* do not make such payment within *thirty (30)* days after the filing of the remittitur from the Supreme Court in the Court from which the appeal is taken, judgment may be entered on motion of *respondent*, in his favor against the undersigned sureties, for such amount, together with the interest that may be due thereon, and the damages and costs which may be awarded against the *appellant* upon the appeal.

And whereas, the *appellant* is desirous of staying the execution of the said *judgment* so appealed from, in so far as relates to the delivery of possession of the said land and premises, we do further, in consideration thereof, and of the premises, jointly and severally undertake and promise, and do acknowledge ourselves further jointly and severally bound in the further sum of *one thousand* dollars (being the amount for that purpose fixed by the Judge of this Court), that during the possession of such property by the *appellant*, he will not commit, or suffer to be committed, any waste thereon, and that if the said *judgment* appealed from be affirmed, or the appeal dismissed, he will pay the value of the use and occupation of the property, from the time of the appeal until the delivery of possession thereof, not exceeding the said sum of *one thousand* dollars, so as aforesaid fixed by the Judge of this Court, by which the said *judgment* was rendered.

[When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising upon the sale, the undertaking must also provide for the payment of such deficiency.]

Witness our hands, etc.

[For justification of sureties, see No. 954.]

NOTE 1.—In California, if the judgment or order appealed from direct the sale or delivery of possession of real property, the execution cannot be stayed, unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that during the possession of such property by the appellant, he will not commit, or suffer to be committed, any waste thereon, and that if the judgment be affirmed, or the appeal dismissed, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof, pursuant to the judgment or order, not exceeding the sum to be fixed by the Judge of the Court by which the judgment was rendered or order made, and which must be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising upon the sale, the undertaking must also provide for the payment of such deficiency. C. C. P., sec. 945.

NOTE 2.—In Nevada the same as in California, except in all other cases the amount of the undertaking is fixed by the Judge. Gen. Stats., sec. 3367.

NOTE 3.—In Idaho the same as in California. Rev. Stats. sec. 4813.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 1729.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 3641.

NOTE 6.—In North and South Dakotas the same down to and including the words, "Possession thereof, pursuant to the judgment," the balance of the section omitted. Comp.



Laws, sec. 5223. And the said section has no reference to actions to foreclose mortgages. *Id.*

If the appeal is from a decree for the sale of mortgaged premises, the judgment is not stayed unless the bond provides for the payment of any deficiency after sale of mortgaged premises. *Id.*, sec. 4224.

NOTE 7.—Wyoming. See Note 7 to form Undertaking on Appeal from Money Judgment.

NOTE 8.—In Washington the same as Wyoming aforesaid (Note 8).

NOTE 9.—Oregon. See Note 9, as aforesaid.

NOTE 10.—Arizona. See Note 10, as aforesaid.

NOTE 11.—Colorado. See Note 11, as aforesaid.

## No. 958.—Undertaking on Appeal—Delivery of Documents, etc.

[TITLE OF COURT AND CAUSE.]

Whereas, *Richard Roe*, one of the defendants in the above entitled action, has appealed to the Supreme Court of the State of California, from a judgment rendered and entered against him in the said action, in the said Superior Court, in favor of the plaintiff, on the twenty-fifth day of August, 1894, for the recovery of the possession of certain documents therein described, [or ordering the delivery or assignment of certain documents; or ordering the execution of a certain document by the defendant, and for costs];

Now, therefore, in consideration of the premises, and of such appeal, we, the undersigned, *John Smith*, of the County of *Santa Barbara*, merchant, and *Paul Jones*, of the said County of *Santa Barbara*, farmer, do hereby jointly and severally undertake and promise, on the part of the appellant, that the said appellant will pay all damages and costs which may be awarded against him on the appeal or on a dismissal thereof, not exceeding three hundred dollars, to which amount we acknowledge ourselves jointly and severally bound, etc., [as in other bonds].

(Dated and signed.)

[For justification of sureties, see No. 954.]

NOTE 1.—In California if the judgment or order appealed from direct the assignment or delivery of documents or personal property, the execution of the judgment or order cannot be stayed by appeal, unless the things required to be assigned or delivered be placed in the custody of such officer or receiver as the Court may appoint, or unless an undertaking be entered into on the part of the appellant, with at least two sureties, and in such amount as the Court, or a Judge thereof, may direct, to the effect that the appellant will obey the order of the appellate Court, upon the appeal.

If the judgment or order appealed from direct the execution of a conveyance or other instrument, the execution of the judgment or order cannot be stayed by the appeal until the instrument is executed and deposited with the clerk with whom the judgment or order is entered, to abide the judgment of the appellate Court. C. C. P., secs. 943-44.

NOTE 2.—In Nevada the same. Gen. Stats., secs. 3365-65.

NOTE 3.—In Idaho the same as in California. Rev. Stats., secs. 4811-12.

NOTE 4.—In Montana the same as in California. C. C. P. secs. 1727-28.

NOTE 5.—In Utah the same as in California. Comp. Laws, secs. 3639-40.

NOTE 6.—In North and South Dakotas the same as in California. Comp. Laws, secs. 5221-22.

NOTE 7.—Wyoming. See Note 7 to form Undertaking on Appeal from Money Judgment.

NOTE 8.—Washington. See Note 8, as aforesaid.

NOTE 9.—Oregon. See Note 9, as aforesaid.

NOTE 10.—Arizona. See Note 10, as aforesaid.

NOTE 11.—Colorado. See Note 11, as aforesaid.



### No. 959.—Undertaking on the Part of Plaintiff on Order of Arrest.

[TITLE OF COURT AND CAUSE.]

Whereas, the above named *plaintiff* has commenced, or is about to commence, an action in the Superior Court of the *City and County of San Francisco*, State of *California*, against the above named *defendant*, and is about to apply for an order for the arrest of the said *defendant* in said action;

Now, therefore, we the undersigned, residents of the *City and County of San Francisco*, in consideration of the premises and of the issuing of said order of arrest, do undertake, in the sum of *two thousand five hundred (2500)* dollars, and promise to the effect, that if the said *defendant* recover judgment, the said *plaintiff* will pay all costs which may be adjudged to the said *defendant*, and all damages which he may sustain by reason of the arrest, if the same be wrongful or without sufficient cause, not exceeding the said sum of *two thousand five hundred* dollars.

Witness our hands, *etc.*

[For justification of sureties, see No. 954.]

NOTE 1.—In California the plaintiff must file an undertaking with sureties in an amount to be fixed by the Judge, which must be at least \$500, that the plaintiff will pay all costs adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same be wrongful, or without sufficient cause, not exceeding the sum specified in the undertaking. C. C. P., sec. 482.

NOTE 2.—In Nevada the undertaking is for "gold coin of the United States," and the undertaking is to pay all damages the defendant may sustain by reason of the attachments, not exceeding the amount in the undertaking mentioned. Gen. Stats., sec. 3096.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 4244.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 803.

NOTE 5.—In Utah the same. Comp. Laws, sec. 3264.

NOTE 6.—In North and South Dakotas the undertaking may be by the plaintiff, without sureties or with sureties. If with sureties, then the same as in California, to pay all damages. If without sureties, then an affidavit is filed with the bond by plaintiff that he is worth the amount thereof over all his debts in property not exempt from execution. Comp. Laws, sec. 4948. See, also, Justification of Sureties.

NOTE 7.—In Wyoming the bond is that plaintiff will pay all damages, not exceeding the amount claimed, which defendant may sustain by reason of the arrest, if the order prove to have been wrongfully issued. Rev. Stats., sec. 2841. See, also, Justification of Sureties.

NOTE 8.—In Washington the Court may fix the amount of the bond, conditioned to pay all the damages which defendant may suffer, and all expenses he may incur by reason of the arrest and imprisonment, or if the order be vacated, or if the plaintiff fail to recover. Hill's Stats., sec. 232.

NOTE 9.—In Oregon the condition is that plaintiff will pay all costs that may be adjudged to the defendant, and all damages he may sustain by reason of the arrest, if it be wrongful and without sufficient cause, not exceeding the amount specified. Hill's Laws, sec. 109, p. 250.

NOTE 10.—In Arizona and Colorado, not provided for.

### No. 960.—Undertaking on the Part of Defendant on Arrest.

[TITLE OF COURT AND CAUSE.]

Whereas, in a certain action in the Superior Court of the *City and County of San Francisco*, State of *California*, wherein *John Doe* is *plaintiff* and *Richard Roe* is *defendant*, an order was duly made and delivered to the Sheriff of the *City and County of San Francisco*, requiring him forthwith to arrest the said *defendant*, and hold him to bail in the sum of *two thousand one hundred and*

fifty dollars; and the said Sheriff having arrested the said *defendant*, and taken him into custody by virtue of the said order;

Now, therefore, we, *Joseph M. Wood* and *F. P. Stone*, are jointly and severally bound in the sum of *two thousand one hundred and fifty* dollars, the amount in the said order of arrest mentioned, that the said *defendant* shall at all times render *himself* amenable to the process of the said Court during the pendency of the said action, and to such as may be issued to enforce the judgment herein; or that we will pay to the said *plaintiff* the amount of any judgment which may be recovered in the said action.

Witness our hands, *etc.*

[For justification of sureties, see No. 954.]

NOTE 1.—In California the defendant may give bail by an undertaking by two or more sureties, in the amount mentioned in the order of arrest, that the defendant will at all times render himself amenable to the process of the Court during the pendency of the action, and to such as may be issued to enforce the judgment, or that they will pay to the plaintiff the amount of any judgment recovered. C. C. P., sec. 487.

NOTE 2.—In Nevada the same, except the undertaking is to be in the money of the contract in suit, and the sureties must state in it their residences and occupations. Gen. Stats., sec. 3103.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 4249.

NOTE 4.—In Montana the same as in Nevada, and the residences and occupations of the sureties must be stated. C. C. P., sec. 809.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 3269.

NOTE 6.—In North and South Dakotas the same as in Nevada; and if personal property is adjudged to be delivered, that he will obey the order of the Court, and that he will not injure the property. Comp. Laws, sec. 4953.

NOTE 7.—In Wyoming the defendant may give bail at any time before judgment, to the effect that if plaintiff recover judgment, he will render himself amenable to the process of the Court thereon. Rev. Stats., sec. 251.

NOTE 8.—In Washington the same as in Nevada; and as to delivering personal property the same as in Dakota, and that he will not injure the property. Hill's Laws, sec. 238.

NOTE 9.—In Oregon the same as in Washington and Nevada, except the occupations of the sureties need not be stated. Hill's Laws, sec. 111, p. 252.

NOTE 10.—In Arizona and Colorado no statutes on the subject.

## No. 961.—Undertaking on Attachment.

### [TITLE OF COURT AND CAUSE.]

Whereas, the above named *plaintiff* has commenced, or is about to commence, an action in the Superior Court of the County of *Alameda*, State of *California*, against the above named *defendant*, upon a contract for the direct payment of money, claiming that there is due to the said *plaintiff* from the said *defendant* the sum of *five hundred (500)* dollars, *gold coin* of the United States, besides interest, and is about to apply for an attachment against the property of the said *defendant* as security for the satisfaction of any judgment that may be recovered therein:

Now, therefore, we, the undersigned, residents of the County of *Alameda*, in consideration of the premises, and of the issuing of said attachment, do jointly and severally undertake in the sum of *two hundred and fifty* dollars, and promise to the effect, that if the said *defendant* recover judgment in said action, the said *plaintiff* will pay all costs that may be awarded to the said *defendant*, and all damages which he may sustain by reason of



the said attachment, not exceeding the sum of *two hundred and fifty (250)* dollars.

(Dated and signed.)

[For justification of sureties, see No. 954.]

NOTE 1.—In California the Clerk requires an undertaking in not less than \$200, and not exceeding the amount claimed, that if defendant recovers judgment, the plaintiff will pay all costs that may be awarded to him, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking. C. C. P., sec. 539.

NOTE 2.—In Nevada the same as in California—in gold coin. Gen. Stats., sec. 3147.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 4304.

NOTE 4.—In Montana the undertaking is in a sum not less than double the amount claimed by plaintiff if the sum be \$1000 or under. If the amount claimed exceed \$1000, then the undertaking shall equal the amount claimed, but not exceeding \$10,000. The conditions of the undertaking are the same. C. C. P., sec. 892.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 3310.

NOTE 6.—In North and South Dakotas the same as in California, except the minimum amount is \$2.00. Comp. Laws, sec. 4996.

NOTE 7.—In Wyoming the attachment bond is for double the amount of plaintiff's claim to pay defendant all damages he sustains by the attachment, if wrongfully issued. Rev. Stats., sec. 2871.

NOTE 8.—In Washington the least sum is \$300, and double the amount for which judgment is demanded, conditioned that plaintiff will prosecute the action without delay, and will pay all costs adjudged to defendant, and all his damages sustained by reason of the attachment, not exceeding the amount specified in the undertaking as the penalty, should the same be wrongfully, oppressively, or maliciously sued out. Hill's Stats., sec. 293.

NOTE 9.—In Oregon the amount is not less than \$100, and the remainder the same as in Washington, leaving out all that part referring to the prosecution of the action and the writ being wrongfully, etc., issued. Hill's Laws, sec. 146, p. 270.

NOTE 10.—In Arizona in not less than double the amount claimed, conditioned that plaintiff will prosecute his suit with effect, and pay all such damages and costs as shall be adjudged against him for wrongfully suing out the attachment. Rev. Stats., sec. 45.

A form of bond is given in the statute (sec. 46), but it is contained in the California form, with the exceptions noted, which must be added.

NOTE 11.—In Colorado, not less than double the amount claimed by the plaintiff; and if the defendant recovers judgment, or if the Court finally decides that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages he may sustain by reason of the wrongful suing out of the attachment, not exceeding the sum specified in the undertaking. C. C. P., sec. 95.

## No. 962.—Undertaking on Release of Attachment.

[TITLE OF COURT AND CAUSE.]

Whereas, the above named *plaintiff* commenced an action in the Superior Court of the *City and County of San Francisco*, State of *California*, against the above named *defendant*, claiming that there was due to said *plaintiff* from said *defendant*, the sum of *five hundred (500)* dollars, *gold coin* of the United States, besides interest, and thereupon an attachment issued against the property of the said *defendant*, as security for the satisfaction of any judgment that might be recovered therein, and certain property and effects of the said *defendant* have been attached and seized by the Sheriff of the *City and County of San Francisco*, under and by virtue of the said writ;

And whereas the *defendant* has appeared in the said action and has applied to the *Judge* of said Court, upon reasonable notice to the said *plaintiff*, for an order to discharge the said attachment, and the *Judge* of said Court having fixed the sum for which the undertaking shall be executed at the sum of *eight hundred (800)* dollars;



Now, therefore, we, the undersigned, residents and freeholders in the said State of *California*, in consideration of the premises, and in consideration of the release from attachment of all of the property attached, as above mentioned, and the discharge of said attachment, do hereby jointly and severally undertake in the said sum of *eight hundred (800)* dollars, and promise that in case the said *plaintiff* recover judgment in the said action, the said *defendant* will, on demand, redeliver such attached property so released, to the proper officer, to be applied to the payment of the judgment, or that in default thereof the said *defendant* and sureties will, on demand, pay to the said *plaintiff* the full value of the property released, not exceeding the said sum of *eight hundred (800)* dollars.

(Dated and signed.)

[For justification of sureties, see No. 954.]

NOTE 1.—In California before making such order, the Court or Judge must require an undertaking of defendant, by at least two sureties, residents and freeholders, or householders, in the State. If plaintiff recover judgment, defendant will, on demand, redeliver the attached property so released to the proper officer, to be applied to the payment of the judgment, or, in default, that the defendant and sureties will, on demand, pay to the plaintiff the value of the property released. The Court fixes the sum of the undertaking. C. C. P., sec. 555.

NOTE 2.—In Nevada, the undertaking must be that the defendant will pay to the plaintiff the amount of the judgment which may be recovered in favor of the plaintiff in the action, not exceeding the sum specified, which shall be double the amount claimed; or to the effect, that in case the value of the property, or the amount of money, debts, or credits sought to be released shall be less than the amount so claimed, that the defendant will pay the amount of such judgment, to the extent of the value of the property, or amount of money, debts, or credits sought to be released. Gen. Stats., sec. 3162.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 4320.

NOTE 4.—In Montana the same as in California, except the defendant can require the Sheriff to release the property at any time before or after appearance, and the sureties agree to pay "on demand." The Sheriff fixes the amount of the bond. C. C. P., sec. 893.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 3325.

NOTE 6.—In Arizona the same as in California, except the words "and costs" are added, and all that part providing for the delivery of the property to the Sheriff is omitted. Rev. Laws, sec. 58.

NOTE 7.—In Colorado the defendant may, before or after appearance, and without an order of Court, require a release upon giving an undertaking that in case plaintiff recover judgment in the action, and the attachment is not dissolved, defendant will, on demand, redeliver such attached property so released to the proper officer, to be applied to the payment of the judgment, and that in default thereof the defendant and sureties will pay to the plaintiff the full value of the property so released. C. C. P., secs. 111-12.

NOTE 8.—In North and South Dakotas the same as in Nevada; and the application to release is made to the Clerk of the Court. Comp. Laws, sec. 5010.

NOTE 9.—In Wyoming the Sheriff takes the bond in double the value of the property attached, to the effect that the property, or its appraised value in money, shall be forthcoming, to answer the judgment obtained by plaintiff. Rev. Stats., sec. 2877.

NOTE 10.—In Washington the defendant may at any time before judgment give bond to the plaintiff, to be approved by the officer serving the attachment, that he will perform the judgment of the Court. Hill's Stats., sec. 316.

NOTE 11.—In Oregon the undertaking may be by one or more sureties, residents and householders, or freeholders, of the State, that they will pay the plaintiff the amount of the judgment recovered in the action. Hill's Laws, sec. 159, p. 278.

## No. 963.—Undertaking to Stay Levy of Attachment.

[TITLE OF COURT AND CAUSE.]

Whereas, the plaintiff in the above entitled cause has commenced an action in the aforesaid Court against the above named defendant for the recovery of *one thousand* dollars, *gold coin*;

And whereas, an attachment has been issued, directed to *Peter Hopkins*, Sheriff of the *City and County of San Francisco*, and placed in his hands for execution, whereby he is commanded to attach and safely keep all the property of the said defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand therein stated, in conformity with the complaint, at *one thousand dollars, gold coin*, unless the defendant give him security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy said demand, besides costs, [or in an amount equal to the value of the property which has been or is about to be attached], in which case to take such undertaking;

And whereas, the said defendant, *Charles Alpers*, is desirous of giving the undertaking mentioned in the said writ;

Now, therefore, we, the undersigned, residents of said *city and county*, in consideration of the premises, and to prevent the levy of said attachment, do hereby jointly and severally undertake in the sum of *two thousand dollars, being an amount sufficient to satisfy plaintiff's demand, besides costs, gold coin* of the United States, and promise to the effect that if the said plaintiff shall recover judgment in said action, we will pay to the said plaintiff, upon demand, the amount of said judgment, together with the costs, not exceeding in all the said sum of *one thousand dollars, gold coin* of the United States.

(Dated and signed.)

[For justification of sureties, see No. 954.]

NOTE.—Sometimes a defendant has notice that his property is to be attached. If so, this form of bond may be used to prevent the levy.

### No. 964.—Undertaking on Release of Attachment to Sheriff (Common Law).

[TITLE OF COURT AND CAUSE.]

Whereas, the above named plaintiffs commenced an action in the Superior Court of the State of *California*, in and for the *City and County of San Francisco*, against the above named defendant, claiming that there was due to said plaintiffs from said defendant the sum of *nine hundred and seventy-four dollars and seventy-four cents in gold coin*, or thereabouts, and thereupon an attachment issued against the property of said defendant as security for the satisfaction of any judgment that might be recovered therein, and certain property and effects of the said defendant have been attached and seized by the Sheriff of the said *city and county* under and by virtue of said writ;

And whereas, the said defendant is desirous of having said property released from said attachment;

Now, therefore, we, the undersigned, residents and householders in the *City and County of San Francisco*, in consideration of the premises, and also in consideration of the release from said at-



tachment of the property attached, as above mentioned, do hereby jointly and severally undertake in the sum of *twelve hundred and fifty* dollars, in *gold coin*, and promise that in case the plaintiffs recover judgment in the action, defendant will pay to plaintiffs the amount of whatever judgment may be recovered in said action, together with the percentage, interest, and costs; the same to be paid in United States gold coin, if so required by the terms of the judgment.

(Dated and signed.)

[For justification of sureties, see No. 954.]

NOTE.—This form of bond may be varied to suit any possible state of a case. It may be taken by the officer having the writ, and under it he may disregard all orders of the Court and all statutory directions, he being liable to the party aggrieved for all damages sustained, personally and on his official bond.

### No. 965.—Undertaking on Injunction.

[TITLE OF COURT AND CAUSE.]

Whereas, the above named plaintiff has commenced an action, and issued summons therein, in the Superior Court of the County of *Lassen*, State of *California*, against the above named defendant, and is about to apply for an injunction, in said action, against the said defendant, enjoining and restraining him from the commission of certain acts, as in the complaint filed in the said action is more particularly set forth and described.

Now, therefore, we, the undersigned, residents of the County of *Lassen*, State of *California*, in consideration of the premises, and of the issuing of said injunction, do jointly and severally undertake in the sum of *three thousand (3000)* dollars, and promise to the effect, that in case said injunction shall issue, the said plaintiff will pay to the said party enjoined, such damages, not exceeding the sum of *three thousand (3000)* dollars, as such party may sustain by reason of the said injunction, if the said Superior Court finally decide that the said plaintiff was not entitled thereto.

(Dated and signed.)

[For justification of sureties, see No. 954.]

NOTE 1.—In California, on granting an injunction, except when the People of the State, a county, or municipal corporation, or a married woman in a suit against her husband, is a party plaintiff, a written undertaking on the part of the plaintiff is required, that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the Court finally decide that the plaintiff was not entitled thereto. C. C. P., sec. 523.

NOTE 2.—In Nevada the same; but a county, a municipal corporation, and a married woman are not excepted. Gen. Stats., sec. 3136.

NOTE 3.—In Idaho the same; and "reasonable counsel fees and costs" added. Rev. Stats., sec. 4291.

NOTE 4.—In Montana the same as in Nevada. C. C. P., sec. 874.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 3303.

NOTE 6.—In North and South Dakotas the same as Nevada; except the Court may accept the sole bond of the plaintiff. Comp. Laws, sec. 4988.

NOTE 7.—In Wyoming the same as in Nevada. Rev. Stats., sec. 2924.

NOTE 8.—In Washington the same as in Nevada. Hill's Stats., sec. 273.

NOTE 9.—In Oregon the same as in Nevada, and "all disbursements and costs" added. Hill's Laws, sec. 409, p. 416.



NOTE 10.—In Arizona the same as in Nevada. Rev. Stats., sec. 2131.

NOTE 11.—In Colorado the same as in Nevada; and "in double the sum directed to be enjoined, and to pay all costs due, or to become due, to the plaintiff in the action at law, and all costs and damages awarded against complainant, if the injunction be dissolved." C. P., sec. 146.

### No. 966.—Undertaking on Claim and Delivery.

[TITLE OF COURT AND CAUSE.]

Whereas, it is alleged by the *plaintiff* in the above entitled action, that the *defendant* in the said action has in his possession and unjustly detains certain personal property, belonging to the said *plaintiff*, to the possession of which the said *plaintiff* is lawfully entitled, of the value of *four hundred and eighty* dollars;

And whereas, the said *plaintiff* being desirous of having the said personal property delivered to him, and by indorsement in writing upon the affidavit, has required the Sheriff of the County of *Siskiyou* to take the said property from the said *defendant*;

Now, therefore, we, the undersigned, residents of the said county, in consideration of the premises, and of the delivery of said property to the said *plaintiff*, do hereby undertake and acknowledge to the effect that we are jointly and severally bound in the sum of *nine hundred and sixty* dollars (being double the value of said property as stated in the affidavit), for the prosecution of the said action for the return of the said property to said *defendant*, if return thereof be adjudged, and for the payment to the said *defendant* of such sum as may, from any cause, be recovered against the said *plaintiff*.

(Dated and signed.)

[For justification of sureties, see No. 954.]

NOTE 1.—In California, upon receipt of the affidavit and notice, with undertaking, by two or more sureties, approved by the Sheriff, that they are bound to the defendant in double the value of the property, as stated in the affidavit for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, from any cause, be recovered against the plaintiff, the Sheriff must forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. C. C. P., sec. 512.

NOTE 2.—In Nevada the same, with the words "gold coin" added. Gen. Stats., sec. 3124.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 4274.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 843.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 3290.

NOTE 6.—In North and South Dakotas the same as in California. Comp. Laws, sec. 4975.

NOTE 7.—In Wyoming the undertaking is in double the value of the property taken; and the sureties undertake that plaintiff will duly prosecute the action, and will pay all costs and damages awarded against him. Rev. Stats., sec. 3025.

NOTE 8.—In Washington the same as in California. Hill's Stats., sec. 257.

NOTE 9.—In Oregon the same as in California. Hill's Laws, sec. 135, p. 262.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 194.

NOTE 11.—In Colorado the same as in California, with two sureties to prosecute the action without delay and with effect. The remainder as in California. C. P., sec. 81.

# No. 967.—Undertaking—Return to Defendant on Claim and Delivery.

[TITLE OF COURT AND CAUSE.]

Whereas, *D. M. Lash*, Sheriff of the County of *Siskiyou*, State of *California*, under and by virtue of an order and requirement duly made and issued in the above entitled action, and to him directed, did, on the *third* day of *June*, 1894, take from the possession of the *defendant* in the said action, the following described personal property, to wit: *five gold watches, five silver watches, seven diamond rings*;

And whereas, the said *defendant* is desirous that the said property be redelivered to him by the said Sheriff;

Now, therefore, we, the undersigned, *Gustave Penochild*, and *Wm. Green*, in consideration of the premises, and of the said redelivery of the said property from the said Sheriff to the said *defendant*, do undertake, promise, and acknowledge to the effect that we are jointly and severally bound unto the said Sheriff in the sum of *nine hundred and sixty (960)* dollars (being double the value of the said property, as stated in the affidavit of the *plaintiff*), for the delivery thereof to the said *plaintiff*, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the said *defendant*.

(Dated and signed.)

[For justification of sureties, see No. 954.]

NOTE 1.—In California at any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the Sheriff an undertaking, by two or more sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. C. C. P., sec. 514.

NOTE 2.—In Nevada the same, with the words "gold coin" added. Gen. Stats. sec. 3126.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 4276.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 349.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 3292.

NOTE 6.—In North and South Dakotas the same as in California. Comp. Laws, sec. 4977.

NOTE 7.—In Wyoming no return of the property to defendant is provided for. Comp. Laws, sec. 3020-37.

NOTE 8.—In Washington the same as in California. Hills' Stats., sec. 259.

NOTE 9.—In Oregon the same as in California. Hill's Laws, sec. 137, p. 164.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 195.

NOTE 11.—In Colorado the same as in California; but it must be executed within forty-eight hours from the time the property was taken. C. P., sec. 83.

# No. 968.—Venire and Clerk's Certificate.

STATE OF *California*, }  
County of *Alameda*. } ss.

I, *Andrew Ryder*, County Clerk of the County of *Alameda*, hereby certify, that on *Monday*, the *eleventh* day of *July*, 1894, the Superior Court of the County of *Alameda* made an order, directing a trial jury, consisting of fifty jurymen, to be drawn and sum-

moned to attend before said Court, on *Monday, the twenty-fifth day of July, 1894*, at the court-room of said Court, in the *City of Oakland*, in said County of *Alameda*. That immediately upon the order aforesaid being made, to wit: on said *eleventh day of July, 1894*, I did, in the presence of said Court, draw from the "jury box," as by law directed, the names of fifty qualified jurymen, as follows:

No.	NAME.	No.	NAME.
1.	<i>Dennis Camron.</i>	1.	<i>Patrick W. Tyler.</i>
2.	<i>Michael Pardee.</i>	2.	<i>Roscoe Mohoney.</i>

[naming the whole panel.]

Therefore, to the Sheriff of said County, Greeting:

You are commanded to summon the above named jurors to be and appear in the Superior Court of the County of *Alameda*, to be held in the court-room of said Court, at the *Court House*, in the said county, on the *twenty-fifth day of July, 1894*, at *ten o'clock A. M.*, to act as trial jurors, and of this writ make legal service and due return.

Witness, etc.

NOTE.—Applicable, generally, to all places.

### No. 969.—Venire—Special.

STATE OF *California*,  
City and County of *San Francisco*. } ss.

To the Sheriff of said County, Greeting:

You are hereby commanded to summon from the body of your county *twenty-four* good and lawful men, to be and appear in the Superior Court of the *City and County of San Francisco*, Department No. 5, to be held in the court-room of said Court, at the *New City Hall*, in the said *city and county*, on the *third day of January, 1894*, at *ten o'clock A. M.*, to act as trial jurors, and of this writ make legal service and due return.

Witness, etc.

No.	NAME.	REMARKS.
1.	<i>John Brown.</i>	.....

NOTE.—Applicable, generally, to all places.

### No. 970.—Verification to Complaint or Answer.

STATE OF *California*,  
City and County of *San Francisco*. } ss.

*John Jones*, being duly sworn, deposes and says, that *he is the plaintiff (or one of the plaintiffs)* in the above entitled action; that he has heard read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to



those matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

(Subscribed and sworn to.)

NOTE 1.—In California in all cases of a verification of a pleading, the affidavit of the party must state that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true; and where a pleading is verified, it must be by the affidavit of a party, unless the parties are absent from the county where the attorney resides, or from some cause unable to verify it, or the facts are within the knowledge of his attorney or other person verifying the same. When the pleading is verified by the attorney, or any other person except one of the parties, he must set forth in the affidavit the reasons why it is not made by one of the parties. When the complaint is verified, the answer must be, unless an admission of the truth of the complaint might subject the party to a criminal prosecution (of any nature), or unless an officer of the State, in his official capacity, is defendant. C. C. P., sec. 445. Except as aforesaid, if the complaint is verified, the answer, to be sufficient, must be verified. *Id.*, sec. 437.

NOTE 2.—In Nevada the same as in California, except the answer need not be verified when the admission of the truth of the complaint might subject the party to prosecution for felony. Gen. Stats., secs. 3074-77.

NOTE 3.—In Idaho the same as in California. Rev. Stats., secs. 4183-39.

NOTE 4.—In Montana substantially the same as in California. C. C. P., sec. 731.

NOTE 5.—In Utah the same as in California. Comp. Laws, secs. 3226, 3234.

NOTE 6.—In North and South Dakotas the same as in California. Comp. Laws, sec. 4922.

NOTE 7.—In Wyoming the California form may be used, just as printed; but it is only necessary to say that "*affiant believes the facts stated in the pleading to be true.*" Rev. Stats., sec. 2492.

NOTE 8.—In Washington every pleading, except demurrers, must be verified, "*that he believes it to be true.*" Hill's Stats., sec. 203.

NOTE 9.—In Oregon the same as in Washington. Hill's Laws, sec. 80, p. 224.

NOTE 10.—In Arizona the plaintiff need not verify his complaint; but the answer, and even demurrer, to the complaint must be verified by affidavit. No form is given by statute; therefore the form in the text will be good. Rev. Stats., sec. 734.

NOTE 11.—In Colorado the same as in Nevada. C. P., sec. 61.

## No. 971.—Verification of Complaint by other Person than Plaintiff.

STATE OF California, }  
City and County of San Francisco. } 88.

William Thomas, being duly sworn on behalf of the plaintiff in the above entitled action, says, that he has read the foregoing complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters that he believes it to be true. That the said plaintiff is absent from the City and County of San Francisco, where his attorney resides; and the facts are within the knowledge of this affiant, who is the agent of the said plaintiff, and therefore he makes this affidavit.

(Subscribed and sworn to.)

NOTE.—See notes to form Verification to Complaint and Answer.

**No. 972.—Warrant—Arrest of Defaulting Witness.**

IN THE SUPERIOR COURT of the *City and County of San Francisco*,  
State of *California*.

The People of the State of *California*, to the Sheriff of said city  
and county, Greeting:

You are hereby commanded, forthwith, to attach the body of  
*John Doe*, defaulting witness, and have him before our said Court  
on *Tuesday*, the *nineteenth* day of *January*, 1894, then and there  
to show cause why he should not be punished for contempt, in  
disobeying a subpoena of this Court duly served on him, summon-  
ing him to appear in this Court as a witness on the *eighteenth* day  
of *January*, 1894.

Witness, *etc.*

NOTE.—Generally applicable.

**No. 973.—Writ of Restitution.**

IN THE SUPERIOR COURT of the *City and County of San Francisco*,  
State of *California*.

Thomas Joyce,	}
Plaintiff,	
-v-	
Peter McCormick,	}
Defendant.	

The People of the State of *California*, to the Sheriff of the *City*  
and County of *San Francisco*, Greeting:

Whereas, on the *eleventh* day of *January*, 1894, *Thomas Joyce*  
plaintiff, recovered a judgment in the said Superior Court of the  
*City and County of San Francisco*, against *Peter McCormick*, for  
the restitution of certain premises in said judgment and hereinaf-  
ter described, and also for the sum of two hundred and forty dollars,  
treble rents for the detention of said premises, one hundred dollars  
damages, and sixteen dollars costs of suit, as appears to us of rec-  
ord, and which judgment was docketed in the Clerk's office of  
said Court on the *twelfth* day of *January*, 1894 [or that "a tran-  
script of the docket of said judgment was filed in the office of the  
County Recorder of the County of *Alameda*, on the *fourteenth* day  
of *January*, 1894"];]

Now, therefore, you the said Sheriff, are hereby commanded to  
deliver to the said *Thomas Joyce* the possession of the lands and  
premises in said judgment, described as follows:

[Description.]

And whereas, the sum of *two hundred and forty dollars treble*  
*rents*, *one hundred dollars damages*, and *sixteen dollars costs*, are now,  
at the date of this writ, due on said judgment, you, the said Sheriff,  
are hereby further required to satisfy said judgment, and all ac-

cruing costs, out of the personal property of said judgment debtor, *Peter McCormick*; or, if sufficient personal property of said debtor cannot be found, then out of the real property in your county belonging to him on the day whereon said judgment was docketed in the aforesaid *city and county*, or at any time thereafter; and make return of this writ within *twenty-five days* after your receipt hereof, with what you have done indorsed hereon.

Witness, *etc.*

NOTE 1.—In California, if the judgment be for the delivery of the possession of real or personal property, it must require the Sheriff to deliver the possession of the same, describing it, to the party entitled thereto, and may, at the same time, require the Sheriff to satisfy any costs, damages, rents, or profits, recovered by the same judgment, out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was rendered to be specified therein if a delivery thereof cannot be had; and if sufficient personal property cannot be found, then out of the real property, as provided in the first subdivision of this section. C. C. P., sec. 682, subd. 5.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 3234, subd. 5.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 4471, subd. 5.

NOTE 4.—In Montana the same. C. C. P., sec. 1211.

NOTE 5.—In Utah the same. Comp. Laws, sec. 3420, subd. 5.

NOTE 6.—In North and South Dakotas the same. Comp. Laws, sec. 5116, subd. 4.

NOTE 7.—In Wyoming the only directions are that the writ shall contain a specific description of the property, and a command to the Sheriff to deliver the property to the person entitled thereto; and the writ may also direct him to make the damages recovered for withholding the possession, and costs, or costs alone, out of the property of the person who so withholds possession. Rev. Stats., sec. 2720.

NOTE 8.—In Washington the same as in California. Hill's Stats., secs. 466, subd. 4.

NOTE 9.—In Oregon the same as in Washington. Hill's Laws, sec. 276, p. 347, subd. 4.

NOTE 10.—In Arizona the same as in Wyoming, except it runs against the property of the person against whom the judgment was rendered. Rev. Stats., sec. 1895, subd. 4.

NOTE 11.—In Colorado the same as in Wyoming, except the Sheriff is commanded to make any sums of money adjudged to be paid the plaintiff as damages and costs. C. P., secs. 273.

### No. 974.—Writ of Possession.

IN THE SUPERIOR COURT of the County of *Marin*, State of *California*.

The People of the State of *California*, to the Sheriff of the County of *Marin*, Greeting:

Whereas, on the *twenty-fifth day of April, 1894*, *John Doe*, as plaintiff, recovered a judgment and decree in the said Superior Court of the County of *Marin*, State of *California*, against *Richard Roe*, as defendant, for the possession of certain premises in said judgment and decree, and hereinafter more particularly described, and also for the sum of \$540 damages for the detention of said premises, besides the sum of \$76.25 costs of suit, as appears to us of record;

And whereas, the judgment roll in the action in which said judgment was entered is filed in the Clerk's office of said Court, in the County of *Marin*, and the said judgment was docketed in said Clerk's office, in the said county, on the day and year first above written:

Now, therefore, you, the said Sheriff, are hereby commanded and required to deliver to the said plaintiff, *John Doe*, the pos-



session of the lands and premises in said judgment and decree described, as follows, to wit:

[Description.]

And whereas, the sums of \$540 damages, and \$76.25 costs, are now (at the date of this writ) actually due on said judgment;

You, the said Sheriff, are hereby further required to make the said sums due on the said judgment, for damages and costs, and all accruing costs, to satisfy the said judgment, out of the personal property of said judgment debtor; or, if sufficient personal property of said debtor cannot be found, then out of the real property in your county, belonging to him on the day whereon said judgment was docketed, in the said county, or at any time thereafter; and make return of this writ within *thirty* days after your receipt thereof, with what you have done indorsed hereon.

Witness, etc.

### No. 975.—Writ of Assistance.

[TITLE OF COURT AND CAUSE.]

The People of the State of *California*, to the Sheriff of the County of *San Mateo*, Greeting:

Whereas, by a judgment and decree of this Court, it was, among other things, adjudged and decreed that the purchasers at the Sheriff's sale of the premises in said decree described as follows, to wit:

[Description.]

should, on the production of the Sheriff's deed, be forthwith put into possession of the above described premises;

And whereas, said Sheriff has issued to the purchaser at such sale, viz: *James Wilson*, his, said Sheriff's deed therefor, which said land and premises are now in possession and occupation of said *Richard Roe*;

And whereas, by an order of this Court, made in the said action, on the *tenth* day of *July*, 1894, it was ordered that a writ of assistance should issue to you, the said Sheriff, to put the said *James Wilson* in possession of the said piece or parcel of land, and him in possession thereof from time to time to maintain and defend:

Therefore, we command you, that immediately after receiving this writ, you go to, and enter upon the said piece or parcel of land, and that you eject and remove therefrom all and every person or persons holding or detaining the same, or any part thereof, against the said *James Wilson*, and that you deliver to the said *James Wilson*, or his assigns, the possession of the said piece or parcel of land without delay; and him, the said *James Wilson*, in such possession thereof, from time to time, maintain, keep, and defend, or cause to be kept, maintained, and defended,

according to the tenor and true intent of the said decree and order of the said Court.

Witness, *etc.*

NOTE.—This writ, in substance, is applicable in all States where foreclosure proceedings are regulated by statute. It may be altered to suit any case.

### No. 976.—Writ of Attachment.

[TITLE OF COURT AND CAUSE.]

The People of the State of *California*, to the Sheriff of the County of *San Mateo*, Greeting:

Whereas, the above entitled action was commenced in the Superior Court of the County of *San Mateo*, State of *California*, by the *plaintiff* in the said action, to recover from the *defendant* in the said action the sum of *five hundred dollars, gold coin* of the United States, besides interest at the rate of *one per cent. per month*, from the *eighteenth day of December, 1894*, and costs of suit; and the necessary affidavit and undertaking herein having been filed as required by law;

Now, we do therefore commend you, the said Sheriff, that you attach and safely keep all the property of said *defendant*, within your said county, not exempt from execution, or so much thereof as may be sufficient to satisfy the said *plaintiff's* demand, as above mentioned; unless the said *defendant* give you security, by an undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached; in which case you will take such undertaking, and hereof make due and legal service and return.

Witness, *etc.*

NOTE.—See No. 524 and notes.

### No. 977.—Writ of Habeas Corpus.

IN THE SUPERIOR COURT of the County of *San Joaquin*, State of *California*.

The People of the State of *California*, to *John T. Ryan*, Sheriff of the County of *San Joaquin*, Greeting:

We command you, that you have the body of *Peter Smith*, by you imprisoned and detained, as it is averred, *together with the time and cause of such imprisonment and detention*, by whatsoever name said *Peter Smith* shall be called or charged, before *C. V. R. Patterson*, Judge of the Superior Court of the State of *California*, at the court-room of said Superior Court, County of *San Joaquin*, on the *twenty-first day of April, 1894*, at *two o'clock* in the afternoon of that day, to do and receive what shall then and there be considered concerning the said *Peter Smith*; and have you then and there this writ.

Witness, *etc.*

NOTE.—See No. 881 and notes.

[Or we command you in person, and not by deputy or agent, to have the body of *Peter Smith*, by you detained as the petition filed in this proceeding avers; and at the same time you are commanded to state in writing, in your return to this writ, the cause of your imprisonment or detention of said *Peter Smith* [if the person detained is known by some other name, then add:] by whatever name said so-called *Peter Smith* is known; the said *Peter Smith* to be brought before the Honorable *Wm. T. Wallace*, Judge of the Superior Court of the City and County of *San Francisco*, State of *California*, on the third day of *July*, 1894, at two o'clock in the afternoon of that day, to the end that justice may be done. And you are commanded to have then and there this writ, with your return indorsed thereon or annexed thereto; [or, if the prisoner is to be brought before the highest Court of the State, add:] before our Justices of our Supreme Court at, etc., on, etc.; or immediately after the receipt of this writ [or instantly upon the receipt of this writ], you are commanded to bring, etc., before our said Justices who are at this moment sitting as a Court awaiting the return of this writ], [or before one or more of said Judges or Justices].

Witness, etc.

#### RETURN TO BE INDORSED ON OR ANNEXED TO THE WRIT.

In obedience to the within [or annexed writ], I certify and return to [the court or officer ordering the writ]\* that before the coming of said writ to me, namely, on, etc., at, etc., [state the commitment, if any, annexing a copy thereof to the return, and detail the facts]; to all of which I certify and have here with me the body of said *Peter Smith*, as by the said writ commanded.

Dated, etc.

[Or as in the above return to asterisk] that neither at the time of the allowance of said writ, nor at any time since, was the said *Peter Smith* in my custody, nor was he restrained by me of his liberty; wherefore I cannot have his body before [the court or officer ordering the writ], as by said writ I am commanded.

Dated, etc.

NOTE 1.—See No. 881 and notes.

NOTE 2.—This writ is not local. It may be said that the law applicable to it is co-extensive with the United States. As a general rule, its function is to inquire into the action of a Court, board, or officer alleged to be proceeding in excess of its jurisdiction. A person regularly in custody cannot be discharged on habeas corpus. Before the writ will issue, it must be shown to the satisfaction of a Court or Judge, that the imprisonment, detention, or commitment are without authority of law. If the complaint or indictment does not charge a crime, or if there has been a conviction for an act not a crime, then the writ will issue. It is also used to liberate witnesses unreasonably detained to insure their appearance to testify in criminal cases. Questions of irregularity at trials, or relating to convictions will not be reviewed on habeas corpus. When the ground for the writ is alleged to be that a prisoner has been committed without probable cause, the evidence taken at the examination must be set out in such form that perjury may be assigned upon false allegations. It is insufficient to aver generally that no evidence was taken showing, or tending to show, the prisoner's guilt. If the application is to be admitted to bail pending appeal, the facts must be stated in such form as will enable the Court to determine whether an injustice has been done the prisoner. The illegal imprisonment must be shown as contradistinguished from a statement of a conclusion of fact, or law. The petition for the writ should state all the facts in a full though concise manner, leaving nothing that Courts will not take judicial notice of to inference or conjecture. See Petition for Writ of Habeas Corpus.



## No. 978.—Bail Bond—Indictment.

THE PEOPLE OF THE STATE OF *California* }  
 against  
*Ah Sing.* }

We, *John Doe*, by occupation a farmer, and *Richard Roe*, by occupation a house carpenter, residents of the County of *San Mateo*, hereby undertake that the above-named *Ah Sing* will appear and answer the above-mentioned indictment [or information] in whatever court it may be prosecuted, and will at all times render himself amenable to the orders and process of the court, and if convicted, will appear for judgment, and render himself in execution thereof; or, if he fails to perform either of these conditions, that we will pay to the people of the State of *California* the sum of five thousand (5,000) dollars.

*RICHARD ROE.*

STATE OF California, } 88.  
County of San Mateo. }

*John Doe and Richard Roe, whose names are subscribed as the sureties to the above undertaking, being severally duly sworn, each for himself, says that he is a resident and a freeholder within the County of San Mateo and State of California, and that he is worth the amount specified in the said undertaking as the penalty thereof, over and above all his debts and liabilities, exclusive of property exempt from execution.* JOHN DOE.

JOHN DOE.

*RICHARD ROE.*

NOTE 1.—In California when, after indictment or information, the defendant has a right to be admitted to bail, the bail must be put in by a written undertaking by two sufficient sureties [with or without the defendant, in the discretion of the Court or magistrate], and acknowledged before the Court or magistrate, in substantially the above form. See Cal. Pen. Code, sec. 1.87.

As to qualification of bail see *post*.

NOTE 2.—In Nevada the same as in California, except residence need not be stated [and on indictment only]. Gen. Stats., sec. 4591.

NOTE 3.—In Idaho the same as in California, except occupation need not be stated. Rev. Stats. 8115, and Stats. 1891, p. 184, Id. 1893, p. 164.

NOTE 4.—In Montana the same as in California. Pen. Code, sec. 234.

NOTE 5.—In Utah the same as in California on indictment only. Comp. Laws, sec. 5175.

NOTE 6.—In North and South Dakota the same form may be used, but all of it except the part charging the sureties is surplusage. Comp. Laws, secs. 7263-7282, but proceedings by information not allowed.

NOTE 7.—In Wyoming the same as in Dakota. Rev. Stats. 3204. But information may be filed as in California. Stats. 1890-91, p. 213.

NOTE 8 —In Washington the same as in Wyoming. Hill's Stats., sec. 1256. Information. Id., sec. 1204.

NOTE 9.—In Oregon the same as in California except on information. Hill's Laws, sec. 1458, p. 827.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1957. Information, sec. 1456.

NOTE 11.—In Colorado the court fixes the bail and is conditioned that defendant will appear on the first day of the next district court holden in and for the county, and not to depart the court without leave. It must be signed, but as to justification there appears to be no provisions. *Mills' Stats.*, sec. 1455.

**No. 979.—Bail, Forfeit of.—Court's Order.**

IN THE SUPERIOR COURT of the *City and County of San Francisco, State of California.*

Present: Hon. *T. W. Freelon*, Judge.

THE PEOPLE OF THE STATE OF *California*  
against  
*A. B.*

The said cause having come on regularly for trial, upon motion of *H. N. Nutting*, the District Attorney of said county, it was ordered that the defendant, *A. B.*, be called. And the said defendant, having been thrice solemnly and duly called, failed and neglected to appear for trial. Whereupon, on motion of the District Attorney, it was ordered that *C. D.* and *E. F.*, the bail of said *A. B.*, be likewise called to produce the said *A. B.* in Court for trial; and the said *C. D.* and *E. F.* having been thrice duly and solemnly called to produce the said *A. B.* for trial, and the said *A. B.* still neglecting and failing to appear, and the said bail wholly neglecting and refusing to produce said *A. B.* for trial, upon motion of the District Attorney, the Court directed the following order to be entered, to wit:

The above-named defendant, *A. B.*, having been heretofore indicted for grand larceny, and duly admitted to bail in the sum of *one thousand* dollars, and the said *A. B.*, on the *twentieth* day of *July, 1895*, having, without sufficient excuse, neglected to appear in Court for trial, although the said *A. B.* was thrice solemnly called to appear in Court for trial, and although *C. D.* and *E. F.*, the bail of said *A. B.*, were thrice solemnly called to produce said *A. B.* in Court for trial, yet the said *A. B.* neglected and refused to appear for trial, and the said bail neglected and refused to produce the said *A. B.* for trial.

Now, therefore, it is ordered by the Court, that the recognizance executed by the said *C. D.* and *E. F.* be, and the same is hereby declared forfeited; and it is further ordered, that the said

*A. B.* be arrested and committed to the custody of the Sheriff of the *City and County of San Francisco*, until legally discharged therefrom. It is further ordered, that the foregoing facts and order be entered on the minutes of this Court.

NOTE.—This applicable to all the States and Territories of the Pacific Coast.

**No. 980.—Bail, Forfeit of Money Deposited as—Court's Order.**

IN THE SUPERIOR COURT of the *City and County of San Francisco*,  
*State of California*.

Present: Hon. *Robert Ferral*, Judge.

THE PEOPLE OF THE STATE OF <i>California</i> ,	}
Plaintiffs,	
against	
<i>A. B.</i> , indicted as <i>C. D.</i> ,	
Defendant.	}

The above-named defendant, *A. B.*, indicted [or informed against] by the name of *C. D.*, having neglected to appear in Court for the purpose of pleading, when his presence was lawfully required in Court, although he was called to appear in Court for the purpose of pleading to the indictment therein, in a loud and audible voice at the courtroom door, and proclamation publicly made that, unless he appear, the money, to wit, *fifteen hundred* dollars, deposited in lieu of bail for that amount, would be forfeited, and the said *A. B.* still neglecting to appear in Court: Now, therefore, it is ordered that the foregoing facts be entered in the minutes of the Court, and that the said sum of *fifteen hundred* dollars deposited in lieu of bail be, and the same is hereby, declared forfeited.

And it is further ordered that the said *A. B.* be rearrested by any Sheriff, constable, marshal, or policeman within this State, and be committed to the custody of the Sheriff of the *City and County of San Francisco*, and that he be detained until legally discharged.

NOTE.—Applicable to all States and Territories.

**No. 981.—Bench Warrant—Indictment or Information.**

IN THE SUPERIOR COURT of the *City and County of San Francisco*,  
*State of California*.

STATE OF <i>California</i> ,	}	ss.
<i>City and County of San Francisco</i> .		

THE PEOPLE OF THE STATE OF *California*, to any Sheriff, Constable, Marshal, or Policeman in this State:

An indictment having been found [or an information having been filed] on the *twelfth* day of *July*, 1895, in the Superior





came into Court. The defendant was duly informed by the Court of the nature of the charge against him for the crime of *petit larceny*, committed on the *fifth* day of *July*, 1895, of his indictment [or of the information filed against him], arraignment, and plea of "Not guilty of the offense charged in the indictment" [information], of his trial and the verdict of the jury, on the *third* day of *August*, 1896, "Guilty as charged in the indictment" [information], and the defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him. To which he replied that he had none. And no sufficient cause being shown or appearing to the Court, thereupon the Court rendered its judgment as follows: "That whereas the said *John Stealsmall* having been duly convicted in this Court of the crime of *petit larceny* [or other crime]:

It is therefore ordered, adjudged and decreed, that the said *John Stealsmall* be punished by imprisonment in the County Jail of the County of *San Mateo*, in the *State of California*, for the term of *one year*." The defendant was then remanded to the custody of the Sheriff of the said County [or in the State Prison].

OFFICE OF THE COUNTY CLERK )

Of the County of *San Mateo*, *State of California*. )

I, *H. Walker*, County Clerk of the County of *San Mateo*, *State of California*, do hereby certify the foregoing to be a full, true, and correct copy of the judgment duly made and entered on the minutes of the said Superior Court in the above-entitled action, and that I have compared the same with the original; that the same is a correct transcript therefrom, and of the whole thereof.

Attest my hand and the seal of the said Superior Court, this *fifth* day of *August*, 1895

*H. WALKER*, Clerk,

[SEAL.]

By *Penman Scratchwell*, Deputy Clerk.

INDORSED AS FOLLOWS:

In the Superior Court of the County of *San Mateo*, *State of California*.

THE PEOPLE OF THE *State of California*, to the Sheriff of the County of *San Mateo* [or to the Warden of the State Prison at *San Quentin*], Greeting:

Whereas, *John Stealsmall* having been duly convicted in the Superior Court of the County of *San Mateo* of the crime of *petit larceny*, and judgment having been pronounced against him, that he be punished by imprisonment in the County Jail of the County of *San Mateo*, in the *State of California*, for the term of *one year*. All of which appearing to us of record, and a certified copy of the judgment being indorsed hereon and made a part thereof:

Now, this is to command you, the said Sheriff of the County of *San Mateo*, to take and safely keep and imprison the said *John*

*Stealsmall* in the County Jail of the said County of *San Mateo*, State of California, for the term of *one year*. And these presents shall be your authority for the same.

Herein fail not.

Witness, Hon. *E. F. Head*, Judge of the Superior Court of the County of *San Mateo*, this *fifth* day of *August*, 1895.

Attest my hand and the seal of the said Court the day and year last above written.

*H. WALKER*, Clerk,

[SEAL.]

By *Penman Scratchwell*, Deputy Clerk.

NOTE 1.—California. Penal Code, secs. 1017, 1207, 1213. In all other States and Territories this form may be used. As a general rule the statutes prescribe no particular form of procedure.

### No. 983.—Indictment or Information.

IN THE SUPERIOR COURT of the *City and County of San Francisco*, State of *California*, the *3d* Day of *May*, 1895.

THE PEOPLE OF THE STATE OF *California* }

vs.

*John Williams*.

*John Williams* is accused by the Grand Jury of the City and County of *San Francisco* by this indictment] or by the District Attorney of said County by this information] of the crime of murder. [Giving its legal appellation, such as murder, arson, or the like, or designating it as felony or misdemeanor] committed as follows: The said *John Williams*, on the first day of *February*, 1895, at the City and County of *San Francisco*, State of *California* [*here set forth the act or omission charged as an offense*] contrary to the form, force, and effect of the statute in such case made and provided, and against the peace and dignity of the people of the State of *California*.

*J. L. BARNES*,

District Attorney.

If an indictment say:

Names of witnesses examined before the Grand Jury on finding the foregoing indictment. [*Here insert names.*]

If an information say:

Names of witnesses examined before filing the foregoing information. [*Here insert names.*]

#### INDORSEMENT.

Indictment [or information] for *Murder*.

THE PEOPLE OF THE STATE OF *California* against *John Williams*.

A true bill:

*WILLIAM PETERS*,

Foreman of the Grand Jury.

Presented by the Foreman of the Grand Jury, in the presence of the Grand Jury, in open Superior Court of the County of *Santa*



*Barbara, State of California*, and filed as a record of said Court, this third day of May, 1895.

A. B. WILLIAMS, Clerk.

If an information say:

Presented by the District Attorney in the Superior Court of the City and County of *San Francisco, State of California*, and filed as a record of said Court this third day of May, 1895.

A. B. WILLIAMS, Clerk.

NOTE 1.—In California there is no difference between indictment and information, except in name and in the proceedings leading up to them. The indictment or information must contain:

1st. The title of the action, specifying the name of the Court to which the same is presented, and the name of the parties.

2d. A statement of the acts constituting the offense in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended. The statute prescribes a form, and says they must be substantially like it. Pen. Code, secs. 950, 951.

NOTE 2.—In Nevada by indictment only, and it must be substantially as follows:

"State of Nevada. The State of Nevada, plaintiff, against A. B., defendant (or John Doe, whose real name is unknown). Defendant A. B., above named, is accused by the grand jury of the county of A., of a felony (or of the crime of murder, etc.), committed as follows:

"The said A. B., on the third day of May, 1895, or thereabouts, without authority of law, and with malice aforethought, killed Richard Roe, by shooting him with a pistol (or with a gun, or other weapon according to the facts)."

If the offense be an assault with intent to commit murder, the statement may be as follows: "The said A. B., on the third day of May, 1895, in the county of A. without authority of law, and with malice aforethought, did shoot at Richard Roe with a pistol with intent to kill him."

If for a misdemeanor, it may be stated the same as above, and in all cases must be signed by the district attorney. Gen. Stats., secs. 4115, 4116.

NOTE 3.—In Idaho statutory directions are the same as in California. The indictment or information must be substantially as follows: [Title of Court and Cause.]

A. B. is accused by the grand jury of the county of A. [or by the district attorney] by this indictment [or information] of the crime of [giving its legal appellation such as murder, arson, or the like] committed as follows: The said A. B., on the first day of May, 1895, at the county of S. [Here set forth the act or omission charged as an offense.] The statement must be direct and certain as it regards—the party charged, the offense charged, the particular circumstances of the offense charged when they are necessary to constitute a complete offense. Rev. Stats. secs. 7677-7679. Stats. 1891, p. 184.

NOTE 4.—In Montana the statutory directions are the same as in California, and the California form can be used both for indictments and informations, except the word "people" is omitted in the last line. Pen. Code, secs. 1832, 1833.

NOTE 5.—In Utah the proceedings are only by indictment. It must contain the title of the action, specifying the name of the court to which it is presented and the names of the parties, and a clear and correct statement of the acts or omissions constituting the offense, with such particulars of the time, place, person, and property as will enable the defendant to understand distinctly the character of the offense complained of and answer the indictment. It must be substantially as follows: [Title of Court and Cause.] The People of the Territory of Utah vs. A. B.

A. B. is accused by the Grand Jury of this Court, by this indictment, of the crime of [giving its legal appellation, such as murder, arson, or the like, or designating it as felony or misdemeanor] committed as follows: The said A. B., on the third day of May, 1895, at the County of U. [here set forth act or omission charged as an offense.] Comp. Laws, secs. 4930-4932.

NOTE 6.—In North and South Dakota proceedings are by indictment only. The statutory directions are the same as in California. No directions as to contents are given by statute, therefore the California form will be good. Comp. Laws, secs. 7241-7244.

NOTE 7.—In Wyoming there are no special general directions as to what an indictment shall contain. The following form of indictment has been prepared, and it is thought that it will be found sufficient: [Title of Court and Cause.]

A. B. is accused by the Grand Jury of the County of C., State of Wyoming, by this indictment of the crime of murder in the first degree, committed as follows, to wit: The said A. B. did, on the third day of May, 1895, at A., in the county of B, State of Wyoming, willfully, deliberately, and of his malice aforethought, premeditatedly kill and murder S. H., and the said S. H. did, on the said third day of May, in said county of B., die at the hand of A. B., as aforesaid, and so the jury on oath do say that the said A. B., as aforesaid, did commit the crime of murder in the first degree, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Wyoming. [And so for all the degrees of murder and manslaughter.] Rev. Stats., sec. 3246.

As to proceedings by information the statute gives a form as follows: [Title of Court and Cause.]

Comes now A. L., County and Prosecuting Attorney of the County of L. in the State of Wyoming, and in the name and by the authority of the State of Wyoming, informs the Court and gives the Court to understand that A. S., late of the county aforesaid, on the third day of May, A. D. 1895, at the County of A., in the State of Wyoming, did [charge the offense as in the proceedings by indictment] contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Wyoming.

When an information is verified by the Prosecuting Attorney, he [after giving the title of the Court and Cause] says:

"I do solemnly swear that I have read the above and foregoing information by me subscribed, and I know the contents thereof and that the facts therein stated are true (or that I have been reliably informed and verily believe the facts therein stated are true), so help me God.

Sworn to before me and signed in my presence this tenth day of June, A. D. 1895, and I do hereby certify (signature and official title of the officer administering the oath) stats. 1890-91, p. 214.

NOTE 8.—In Washington the statutory directions are the same as in California. The indictment must be substantially as follows: [Title of Court and Cause.]

A. B. is accused by the Grand Jury of the County of C. by this indictment [or by C. D., Prosecuting Attorney of the County of C. by this information] of the crime of [here insert the name of the crime, if it have one, such as treason, murder, arson, manslaughter, or the like, or if it be a crime having no general name, such as libel, assault and battery, and the like, insert a brief description of it as given by law] committed as follows:

The said A. B., on the third day of May, 1895, in the County aforesaid [here set forth the act charged as a crime].

Dated at S. in the County aforesaid the tenth day of June, A. D. 1895.

(Signed) C. D., Prosecuting Attorney.

[Indorsed] A true bill.

E. F., Foreman of the Grand Jury.

Hill's Stats. secs. 1234-1236.

NOTE 9.—In Oregon the same as in Washington, by indictment only, and signed by District Attorney and Foreman of the Grand Jury. Hill's Laws, p. 769, secs. 1268, 1269.

NOTE 10.—In Arizona the same statutory directions as in California.

[Title of Court and Cause.]

A. B. is accused by the Grand Jury of the County of A. by this indictment [or by the District Attorney by this information] of the crime of [giving the legal appellation such as murder, arson, manslaughter, or the like, or designating it as a felony or misdemeanor] committed as follows: The said A. B. on the third day of May, A. D. 1895, at the County of L. [Here state the act or omission constituting the offense.]

Subscribed by the District Attorney and Foreman of the Grand Jury. Rev. Stats., secs. 1457-1460, p. 779.

NOTE 11.—In Colorado an indictment is sufficiently technical and correct which states the offense in the terms and language of the Code, or so plainly that the nature of the offense may be easily understood by the jury. It shall be in the commencement substantially as follows: [Title of Court and Cause.]

The Grand Jurors chosen, selected, and sworn, in and for the County of D. in the name and by the authority of the people of the State of Colorado, upon their oaths present, etc. [Here insert the offense, and time and place of committing the same with reasonable certainty.] Mills' Stats., sec. 1432, p. 964.

In this manner the form ends, but the remaining statutory directions are the same as in Wyoming. In Wyoming and Colorado, in describing murder, it is necessary to say that the defendant did "kill and murder the deceased," but in charging manslaughter it must be alleged that the defendant did "kill and slay the deceased." The form of indictment drawn for Wyoming will be applicable in Colorado with the commencement aforesaid. Id., sec. 1433, p. 967.

As to proceedings by informer the following forms must be used: [Title of Court and Cause.]

C. D., District Attorney within and for the 4th Judicial District of the State of Colorado, in the County of A., in the State aforesaid, informs the Court that A. B., on the third day of May, A. D. 1895, at the said County of A., did then and there [here set out the offense as in an indictment]. C. D., District Attorney, or C. D., District Attorney, by H. M., Deputy.

Then, C. D., District Attorney, or the Deputy, makes oath and says that the facts stated in the foregoing information are true, according to his best information and belief.

(Signed, sworn to as usual.)

If a person competent to be a witness verifies the information he says: "E. F. makes oath and says that the facts stated in the foregoing information are true of his own personal knowledge."

(Signed and sworn to as usual.)

Stats. 1891, p. 241.

## No. 984.—Subpœna, to Bring Papers, Etc.

[BLANK PUBLISHED.]

IN THE SUPERIOR COURT of the County of Santa Clara, State of California.







*T. B. Cloverdale*, Judge of the Superior Court of said county, that *Ezra Jones* do attend as witness before the Hon. the Superior Court, at the courthouse of said county, as commanded by the foregoing subpoena.

Done at the courtroom of said Court, in the County of *Santa Barbara*, this *twenty-second* day of *January*, 1895.

[Signed by Judge.]

### No. 988.—Subpoena—Return of.

[TITLE OF COURT AND CAUSE.]

I hereby certify that I served the within subpoena on the *twenty-second* day of *January*, 1895, on *John Doe*, *Richard Roe*, and *John Smith*, being the witnesses named in said subpoena, at the County of *Santa Clara*, by showing the original to *each* of said witnesses personally, and informing *each* of them of the contents thereof.

NOTE 1.—In California a subpoena may be signed and issued by:

1st. A magistrate before whom a complaint is laid for a witness in the State, either on behalf of the people or of the defendant.

2d. The District Attorney for witnesses in the State in support of the prosecution, or for such other witnesses as the Grand Jury, upon an investigation pending before them, may direct.

3d. The District Attorney for witnesses in the State, in support of an indictment or information, to appear before the Court in which it is to be tried.

4th. The Clerk of the Court in which an indictment or information is to be tried; and he must, at any time, upon application of the defendant, and without charge, issue as many blank subpoenas, subscribed by him as Clerk, for witnesses in the State, as the defendant may require.

If books, papers, or documents are required, a direction to the following effect must be contained in the subpoena: "And you are required also, to bring with you the following." [Describing intelligently the books, papers, or documents required.]

No person is obliged to attend under subpoena out of the county of his residence unless upon affidavit of the District Attorney, or Prosecutor, or of the defendant, or his counsel, stating that he believes the evidence material, and his attendance and examination necessary. A Justice of the Supreme Court or a Judge of a Superior Court indorses on the subpoena an order for the attendance of the witness. Penal Code, secs. 1326-1330. It may be served by any person. Service is made by showing the original to the witness personally and informing him of its contents: *Id.*, sec. 1338. If the witness attends from out of the county upon the order of the Court; or if *he is poor*, the Court may order his expenses paid. *Id.*, 1329.

NOTE 2.—In Nevada the same as in California. Gen. Stats., secs. 4117-4429.

NOTE 3.—In Idaho the same. Rev. Stats., secs. 8148-8 55.

NOTE 4.—In Montana substantially the same as in California. Pen. Code, secs. 2460-2467.

NOTE 5.—In Utah witnesses in criminal cases are served with subpoena the same as in civil cases. Books and documents are brought into Court by the same process as in California, but no person need attend under subpoena out of the county of residence unless the distance be less than thirty miles from his place of residence to the place of trial. No form or special directions are given, but the forms given in the text will be sufficient. To secure the attendance of a witness in another county the Clerk mails the subpoena to the Sheriff of the county where the witness resides. He serves it in the usual manner, and if the witness fails to attend the trial he is liable to punishment. Comp. Laws, secs. 3921-3965. But no witness for a defendant in a criminal case shall be subpoenaed, paid mileage, or per diem, by the Territory except upon an order of the court when a defendant is awaiting trial for felony or indictable misdemeanor. Such order can only be made upon affidavit showing—

*First*.—That the defendant is unable to pay the per diem and mileage of said witness.

*Second*.—That the evidence is material to the defendant's defense, as he is advised by counsel.

*Third*.—That the defendant cannot safely proceed to trial without said witness. Stats. 1892, sec. 8, p. 87.

NOTE 6.—In North and South Dakota the same general directions as in California, and its form may be used, and the form is the same in both civil and criminal proceedings in the courts of record. Comp. Laws., secs. 5261-5276.

There is a form prescribed by statute for all courts, as follows: "In the name of the people of the [State of Dakota]: To A. B. You are commanded to appear before C. D., a Justice of the Peace, of the town of S. [the Grand Jury of the County of S.] for the

District Court of S.], or as the case may be, on [stating the day and hour] as a witness in a criminal action prosecuted by the State of North or South Dakota against E. F.

Dated at the town of S. [as the case may be] the 8th day of May, 1895.

Signed by officer. Id., secs. 7526-7539. In other respects the same as in California.

NOTE 7.—In Wyoming no form is prescribed, but the one prescribed for California will be sufficient. It may be served by any person. The directions to produce books, etc., are the same as in California. In civil actions he need not go out of his county. In criminal cases the same form may be used. The practice is for the defendant to file a *precipe* [written demand] with the clerk of the court, who then issues writs of subpoena for all the witnesses named in the *precipe* to the sheriff of the county, or to the sheriff of any county in the State where the witness may be found. The service must be by the Sheriff unless he deposes some disinterested person to serve and return it. If the special deputy makes service he makes return on it by affidavit of the facts of the service. A defendant may have two witnesses at the expense of the county, and also two more on making affidavit, and file it with the Clerk, that he is unable to obtain such witnesses at his own expense on account of poverty. If a defendant wants more than the aforesaid four witnesses, he must make one more affidavit, and also file it with the Clerk but addressed to the Court, stating his want of means to procure them, their names, and what he expects to prove by them, and if the Court deem it right the witnesses will be subpoenaed at the public expense. Rev. Stats., secs. 3288-3299.

NOTE 8.—In Washington the California form is applicable in both civil and criminal proceedings. There is no statutory form. It is enacted that witnesses may be compelled to appear and testify. Hill's Stats., sec. 1307. But no person shall be obliged to attend out of the county in which he resides unless his residence is within twenty miles of the place where the Court is held. Id., sec. 1650. He may be ordered to produce books and documents the same as in California. Id., sec., 1651. The subpoena may be served by any suitable person over eighteen years of age, the same as in California, and return is made in the same manner. Id., sec. 1653.

NOTE 9.—In Oregon the same generally as in Washington, and proof of service is the same as proof of service of summons. Hill's Laws, p. 596, secs. 789-801. The special provisions are that in criminal cases the Clerk will issue subpoenas for five witnesses at the expense of the State; but the Court upon good cause shown may allow a greater number to be summoned at the State's expense. Id., p. 838, secs. 1506-1518.

The statutory form is, "To A. B. You are hereby" commanded to appear before the Grand Jury of the County of C. [or the Circuit Court for the County of C.] at [naming the place] or [stating the day and hour] as a witness [before the Grand Jury] or [in a criminal action prosecuted by the State of Oregon against E. F.]

Dated and signed by the officer. Id., p. 838, sec. 1512.

If books, etc., are wanted a clause is inserted saying, "and you are required, also, to bring with you the following" describing intelligibly the books, papers, or documents required. Id., sec. 1513. It is served the same as in California, but no person is obliged to attend on behalf of a *defendant* out of his county where he resides unless his residence be within thirty miles of the court; but the court may, by order, command him and all witnesses in the State to attend irrespective of residence. Id., secs. 1516-1518.

NOTE 10.—In Arizona a witness is brought into court by the same proceedings as in California, and the law is in all respects generally the same. No form is given by statute, and all the forms in the text are applicable. Rev. Stats., secs. 2085-2098, pp. 821, 2.

NOTE 11.—In Colorado the California forms are applicable. The subpoena is issued by the Clerk, and it runs to a person in any county in the State, irrespective of distance. Mills' Stats., sec. 1457.

If a person on trial makes affidavit that he is too poor to pay for his witnesses' attendance, and if they are within the judicial district, or within one hundred miles of the place of trial, the Court may make an order for their attendance and they then be paid by the State the same as if the prosecution summoned them. Stats. 1891, p. 26. It must be served by a person of full age not a party to the proceedings, and the return is the same as in California. Pen. Code, sec. 441.

## No. 989.—Sureties on Bail—Justification of.

State of California, }  
City and County of San Francisco. }

Samuel Davis and Ferdinand Reis, persons whose names are subscribed as the sureties to the above undertaking, being severally sworn, each for himself, says: That he is resident and a householder within the City and County of San Francisco, and State of California, and that he is worth the amount specified in the said undertaking as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

(Subscribed and sworn to.)



NOTE 1.—In California the qualifications of bail are as follows:

1. Each of them must be a resident, householder, or freeholder within the State; but the Court or magistrate may refuse to accept any person as bail who is not a resident of the county where bail is offered.

2. They must each be worth the amount specified in the undertaking, exclusive of property exempt from execution; but the Court or magistrate, on taking bail, may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking, if the justification be equivalent to that of sufficient bail. The bail must in all cases justify by affidavit taken before the magistrate, that they each possess the qualifications provided as aforesaid. The magistrate may further examine the bail upon oath concerning their sufficiency, in such manner as he may deem proper. Pen. Code, secs. 1279, 1280.

NOTE 2.—In Nevada the same. Gen. Stats., secs. 4385, 4386.

NOTE 3.—In Idaho the same. Rev. Stats., secs. 8109, 8110.

NOTE 4.—In Montana the same as in California. Pen. Code, secs. 2352, 2353.

NOTE 5.—In Utah the same as in California. Comp. Laws, secs. 3276, 3277.

NOTE 6.—In North and South Dakota the qualifications of sureties are the same as in civil cases. Comp. Laws, sec. 7607. Therefore it is impossible to state what the qualifications are. They appear to be different in different proceedings.

Of Sureties in Arrest.....	See Id. secs. 4958-4962
In Claim and Delivery.....	" " " 4976-4979
In Attachment.....	" " sec. 5010
On Appeal.....	" " 5232
On Administrator's Bond.....	" " secs. 5371, 5372

Looking this matter up a searcher after truth becomes weary.

NOTE 7.—In Wyoming in all cases, civil and criminal, the sureties must be residents of the State, and worth in the aggregate double the sum to be secured beyond the amount of their debts and have property liable to execution in the State equal to the sum to be secured. Rev. Stats., sec. 2343.

NOTE 8.—In Washington the same comments as in Dakota. See Arrest and Bail.

NOTE 9.—In Oregon each of them must be a resident and a householder or freeholder within the State; but no counselor or attorney, Sheriff, Clerk of any Court, or other officer of any Court is qualified. They must each be worth sum specified in the undertaking exclusive of property exempt from execution, and over and above all just debts and liabilities, but the Court or magistrate may allow more than two bail to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of two sufficient bail. Hill's Laws, sec. 1472, p. 829.

NOTE 10.—In Arizona the same as in Oregon. Rev. Stats., sec. 1942, p. 813.

NOTE 11.—In Colorado the bail bond [recognizance] must be sureties, and certified by the Judge. No qualifications are prescribed by statute. It is presumed that the officer taking bail will see that it is sufficient. See Mills' Stats., p. 994, sec. 1486.

## V. SUPERIOR COURT—PROBATE.

The work of revising probate forms has been done in the spirit of the liberal provisions of section 1704 of the Code of Civil Procedure, viz.:

"Orders and decrees made by the Court, or a Judge thereof, in probate proceedings, need not recite the existence of facts, or the performance of acts, upon which the jurisdiction of the Court or Judge may depend, but it shall only be necessary that they contain the matters ordered or adjudged, except as otherwise provided in this title."

Notwithstanding a desire to strike out *all* superfluous matter, it could not be accomplished. The wordy forms so familiar to the readers of all works on pleadings and precedents still linger in part in code courts. In time evolution will remove all superfluous matter. One instance of the use of superfluous matter is enough: Until 1880 all the published forms of letters of administration and testamentary contained this clause: "I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully perform, according to law, the duties of administrator [or execu-



tor] of the estate of [A. B.], deceased." See Belknap's Probate Law, ed. 1861, form No. 35. The only authority for this oath was found in section 72 of the act of 1851, providing that executors and administrators should subscribe an oath that "*he will perform, according to law, the duties of his office.*" In 1880, in the first edition of this book [Bancroft's Forms], all reference to supporting the Constitution was omitted; but such was the force of custom that the omitted part in the printed forms was usually *interlined* in San Francisco and elsewhere, until the advent of his Honor Probate Judge Coffee, in 1884. In many other instances similar surplusage is retained, but in the year 1895 no Judge would think of requiring the Prince of Wales [citizenship not being a qualification] [should he be appointed executor of a will filed for probate in California] to make oath that he "will support the Constitution of the United States and the Constitution of the State of California," even against all assaults [and batteries] his august mother might deem it her duty to make on those cherished documents.

One more example: The Code States have simplified deeds and mortgages to a few lines [see first part Deed-Mortgage]; but notwithstanding this, the longest forms that can be bought are in common use. A form-book omitting the long, useless precedents would not meet a conveyancer's wants. He wants something he can conscientiously charge for, and he will find it in the first part of this, and in all parts of all other books the writer of this note has ever examined, except Townsend's New York Forms, published in 1848, which were so brief, accurate, and to the point that conveyancers and attorneys refused to use the book, and it soon went out of print.

### No. 990.—Account.

IN THE SUPERIOR COURT of the *City and County of San Francisco,*  
*State of California.*

IN THE MATTER OF THE ESTATE OF }  
    *Thomas Jones,* }  
    Deceased. }

*Mary Jones, administratrix,* in account with the Estate of  
*Thomas Jones, deceased.*

To Cash received as follows, to wit:

	1894.	Dr.
May 17.	Moneys on hand at time of death of deceased.	\$ 50 00
Sept. 7.	Net proceeds of sales of personal property....	4,118 50
	1894.	
June 20.	Net proceeds of sales of real estate.....	2,997 50
		<hr/>
		\$7,166 00

By Cash paid as follows, to wit:

1894.		Voucher No.	Cr.
June 16.	Fees of Clerk of Court.....	1	\$ 16 50
July 3.	Fees of Appraisers of Estate...	2	30 50
" 18.	Fees of Attorney for Administratrix.....	3	100 00
" "	Publication of Notice to Creditors.....	4	5 00
Sept. 7.	Publication of Notice of Application for Order of Sale of Personal Property.....	5	5 00
" "	Notary Fees, Return of Sale of Personal Property.....	6	1 50
Dec. 7.	Publication of Order to Show Cause as to Sale of Real Estate.....	7	10 00
1894.			
Jan. 18.	Affidavits to Return of Sale of Real Estate, paid as follows: To A. J. Jeghers, 50 cts; to W. W. Lawton, \$1, and Henry Haight, 50 cts., at the City of San Francisco.....		2 00
June 16.	Allowance to Family, paid monthly, up to this date, at the rate of \$100 per month..	8	1,200 00
June 15.	By Balance.....		5,795 50

\$7,166 00

Wherefore, said Mary Jones, administratrix, prays that said annual account be approved, and settled.

MARY JONES.

Administratrix of the Estate of Thomas Jones, Deceased.  
San Francisco, June 16, 1895.

#### STATEMENT OF DEBTS PRESENTED AND ALLOWED.

The following is a correct statement of all the debts which have been presented and allowed during the period embraced in the foregoing account, to wit:

Claim of John Smith, on promissory note, and for money loaned, and horse sold for .....	\$1,500 00
With interest on the sum of \$1,000 at two per cent per month, from April 20, 1895. Allowed and approved by administratrix, June 20, 1894, by Judge, June 22, 1881.	
Claim of George Taylor, funeral expenses for.....	200 00
Allowed and approved by administratrix, June 21, 1894; by Judge, June 23, 1894.	
Claim of Dr. C. G. Bryant, expenses last sickness, for....	250 00

*Allowed and approved by administratrix and Judge,  
July 1, 1894.*

*Claim of Alfred Pope, balance of account, for..... 500 00*

*Allowed and approved by administratrix and said  
Judge, July 5, 1894.*

*Amount of claims.....\$2,450 00*

MARY JONES,

*Administratrix of the Estate of Thomas Jones, Deceased.*  
See No. 991 for affidavit to account.

### No. 991.—Account, Affidavits to.

[TITLE OF COURT AND CAUSE.]

*Mary Jones, of said City and County, being duly sworn, says: I am the administratrix of the estate of Thomas Jones, deceased. The foregoing account, filed for the first or second, etc., account of my administration of the said estate, is in all respects just and true, and according to the best of my knowledge, information and belief, contains a full, true, and particular account of all my receipts and disbursements on account of the said estate, from the commencement of my administration to the sixteenth day of June, 1895, and of all sums of money belonging to the said estate which have come into my hands as such administratrix, or which have been received by any other person by my order, or authority, for my use; and of all claims presented, and allowed, or paid; and I do not know of any error or omission in said account to the prejudice of any person interested in the said estate.*

*[I further state that the items of expenditure, not exceeding twenty dollars, for which no vouchers are annexed or produced, have actually been paid and disbursed by me, at the place where, the date when, and to the parties to whom the said payments are stated, in the said account, to have been made respectively; and that said account exhibits not only the debts which have been paid, but also a statement of all debts which have been duly presented and allowed during the period embraced in the said account.]\**

(Subscribed and sworn to.)

NOTE 1.—In California six months after his appointment, and at any time when required by the Court, either upon its own motion or upon the application of any person interested in the estate, the executor or administrator must render an exhibit under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants, and all other matters necessary to show the condition of its affairs, C. C. P., sec. 1622.

NOTE 2.—In all places see notes to form No. 1028 "Exhibit made by Executor or Administrator six months after his appointment."

### No. 992.—Affidavit of Publication.

[TITLE OF COURT AND ESTATE.]

STATE OF California.

City and County of San Francisco. } ss.

William F. Bogart, of the said City and County, being duly

\*NOTE "A." In the form there is only one item of two dollars for which a voucher is not produced. If vouchers are filed covering all payments, then the last paragraph can be omitted. See Exhibit No. 1028.



sworn, deposes and says, that he is over eighteen years of age; that he has no interest whatsoever in the estate mentioned therein, and is not a party thereto; and that he is the principal clerk of the printers and publishers of *The Daily Examiner*, a newspaper published daily in said City and County, and has charge of all the advertisements in said newspaper, and that the notice to creditors in the case of the estate of *Thomas Jones, deceased*, of which notice the following is a printed copy:

[Here insert printed copy.]

Has been published *once a week for four successive weeks* in the above-named newspaper, commencing on the first day of July, 1895, and ending on the thirty-first day of July, 1895 (both days inclusive) and further he sayeth not.

(Subscribed and sworn to.)

NOTE 1.—In California evidence of the publication of a document or notice required by law, or by an order of a Court or Judge, to be published in a newspaper, may be given by the affidavit of the printer of the newspaper, or his foreman or principal clerk, annexed to a copy of the document or notice, specifying the times when and the paper in which the publication was made. C. C. P., sec. 2010.

The publication must be made daily, or otherwise as often during the prescribed period as the paper is regularly issued, unless otherwise provided in C. C. P. The Court or Judge may order a less number of publications during the period. Id., sec. 315.

NOTE 2.—In Nevada there is no statute similar to section 2010 of the California C. C. P., but section 315 is the same as section 2956 of the Nevada statute.

NOTE 3.—In Idaho the same as Rev. Stats., secs. 5656, 6053.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 3331.

NOTE 5.—In Utah the same. Comp. Laws, secs. 3936, 4387.

NOTE 6.—In North and South Dakota the affidavit may be made by the printer, his foreman or publisher. The copy need not be annexed, but it always is to avoid a description of it in the affidavit—that is to say, it is annexed and made part of the affidavit by reference. Comp. Laws, secs. 4903, 5304.

NOTE 7.—In Wyoming there are no special provisions regulating the subject, except it is provided that proof of service by publication must be made by affidavit. The time of publication for all notices is fixed by law. See Rev. Stats., secs. 2435, 2437, 2438. The California form can be used without change.

NOTE 8.—In Washington the publication of legal notices required by law or by an order of a Court or Judge to be published in a newspaper once a week for a specified number of weeks shall be made on the day of each week on which such newspaper is published. [How can it be published otherwise?] Stats. 1893, p. 415.

NOTE 9.—In Oregon the same as sec. 2010 in California C. C. P. The time of publication is fixed by the order and not by the statute. See Hill's Laws, p. 602, sec. 810.

NOTE 10.—In Arizona the same as California C. C. P., sec. 315. As to proof of publication the statute is silent.

NOTE 11.—In Colorado there are no special provisions similar to California, but the California form may be used to establish service of summons by publication, and in many other similar proceedings.

## No. 993.—Affidavit—Service of Notice of Petition for Probate of Will.

[TITLE OF COURT AND ESTATE.]

A, B, being sworn, says that he is over the age of twenty-two years, and competent to be a witness in said estate proceedings. That on the fifth day of May, 1895, he served notice of the time and place appointed for the hearing of the petition for the probate of the will of said deceased filed in said estate, upon A, B, C, D, and E, the heirs of said testator, resident in the said State at their places of residence [stating the place where directed as

appears in the petition] and deposited copies of the said notices in sealed envelopes in the postoffice of city and county directed severally to each of said heirs as their said residences with the postage paid on each letter, on April 20, 1895.

A copy of said notice is hereto attached and made part hereof. (Subscribed and sworn to.)

NOTE 1.—In California copies of the notice of the time appointed for the probate of the will must be addressed to the heirs of the testator resident in the State, at their places of residence, if known to the petitioner, and deposited in the postoffice, with the postage thereon prepaid, at least ten days before the hearing. If their places of residence be not known, the copies of notice may be addressed to them, and deposited in the postoffice at the county seat of the county where the proceedings are pending. A copy of the same notice must in like manner be mailed to the person named as executor, if he be not the petitioner; also, to any person named as coexecutor not petitioning, if their places of residence be known. [Proof of mailing the copies of the notice must be made at the hearing. Personal service of copies of the notice at least ten days before the day of hearing is equivalent to mailing.] C. C. P., sec. 1304.

NOTE 2.—In Nevada no such notice is necessary, but the Court orders citation to the heirs, etc., to be issued and served. Gen. Stats., sec. 2680.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 5302.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2326.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 3996.

NOTE 6.—In North and South Dakota the same as in California, except the part in brackets is omitted. Comp. Laws, sec. 5665.

NOTE 7.—In Wyoming the same as in California. Stats., 1890-91, p. 247, sec. 9.

NOTE 8.—In Washington the notice is by citation the same as in Nevada. Hill's Stats. secs. 848-850.

NOTE 9.—In Oregon it is not necessary to cite the next of kin of the testator in order to make proof of a will. See 7 Oregon Reports, p. 42. Hubbard vs. Same.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. .

NOTE 11.—In Colorado a citation is issued the same as in Nevada and Washington. Mills. Stats., secs. 4635-4669.

## No. 994.—Affidavit of Posting Notice, etc.

[TITLE OF COURT AND ESTATE.]

STATE OF California, }  
City and County of San Francisco. } ss.

Bernard Lande, of said City and County, being duly sworn, says that he is over the age of eighteen years, not interested in or a party to the estate of Thomas Jones, deceased; that on the sixth day of January, 1895, he posted correct and true copies of the foregoing notice in three of the most public places in said City and County, to wit, one of the said copies at the place at which the Court is held, one at the United States Postoffice, and one at the Hall of Records, in said City and County.

(Subscribed and sworn to.)

## No. 995.—Affidavit of Posting Notice of Settlement of Account.

[TITLE OF COURT AND ESTATE.]

STATE OF California, }  
City and County of San Francisco. }

Robert S. Day, of said City and County, being duly sworn, says, that he is over the age of eighteen years, not interested in the estate of Thomas Jones, deceased, and is not a party

thereto; that on the *sixteenth* day of *June, 1895*, he posted correct and true copies of the above notice in three of the most public places in said *City and County*, to wit, one of said copies at the place at which the Court is held, one at the *United States Postoffice*, and one at the *Hall of Records* in said *City and County*.

(Subscribed and sworn to.)

### No. 996.—Attorney of Minors—Assent of, etc.

[TITLE OF COURT AND ESTATE.]

I, *Frank J. French*, appointed by the Superior Court [or Judge] of the *City and County of San Francisco, State of California*, attorney of *William Jones, Charlotte Jones, and Emma Jones, minor heirs and children of Thomas Jones*, deceased, for the purpose of appearing for them and taking care of their interests in the proceedings in the estate of said deceased, do hereby appear on behalf of said minor *heirs* and assent to the order of sale of real estate, made by the Superior Court of said *City and County*, this *seventh* day of *December, 1895*.

(Signed by attorney.)

NOTE.—See No. 1056 and notes.

### No. 997.—Attorney of Minors—Consent to Probate of Will.

[TITLE OF COURT AND ESTATE.]

I, *Creed Haymond*, appointed by the said Superior Court, attorney of the minors, *Charles Clifford, and Elizabeth Clifford, and Jane Clifford, widow*, who are interested in the said estate, to represent them on the hearing of the testimony in proof of a document filed in said Court on the *eighteenth* day of *April, 1895*, purporting to be the last will and testament of said deceased, do hereby appear on their behalf, and consent that the said document, purporting to be the last will and testament of said deceased, as aforesaid, be allowed and recorded herein, and be admitted to probate in said Court, as the last will and testament of the said deceased, and that letters *testamentary* be issued to *Timothy Markham and Gordon Bennett*, according to the prayer of their petition, filed on the said *eighteenth* day of *April, 1895*.

NOTE.—See No. 1056 and notes.

### No. 998.—Authority—One Executor to Act for the Other.

[TITLE OF COURT AND ESTATE.]

Whereas, I am one of the two executors of the last will and estate of *Henry Brown*, deceased. Now, I hereby give my coexecutor, *Samuel Smith*, authority to act for me in all matters pertaining to said estate the same as if I took part personally.

Witness, etc.



NOTE 1.—In California where there are two executors or administrators the act of one is effectual if the other is absent from the State, or laboring under any legal disability from serving [serving a term in a state's prison would be a disability]. Or if he has given his coexecutor or administrator authority, in writing, to act for both. Where there are more than two the majority govern. C. C. P., sec. 1355.

NOTE 2.—In Nevada the same if given under seal. Gen. Stats., sec. 2714.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 5346.

NOTE 4.—In Montana the same. C. C. P., sec. 2406.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4030.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5700.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 7, p. 252.

NOTE 8.—In Washington, Oregon, and Colorado, not applicable.

NOTE 9.—In Arizona the same as in California. Rev. Stats., sec. 1010.

### No. 999.—Bond on Qualifying. [Two Sureties.]

[TITLE OF COURT AND ESTATE.]

KNOW ALL MEN BY THESE PRESENTS, that we, *Henry Jones*, principal, and *John Smith* and *James Brown*, sureties, are held and firmly bound to the State of *California* in the sum of *ten thousand seven hundred* dollars, lawful money of the United States of America, to be paid to the said State of *California*, for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this *sixteenth* day of *June*, 1895.

The condition of this obligation is such, that whereas, by an order of the Superior Court of the *City and County of San Francisco*, State aforesaid, duly made and entered on the *fifteenth* day of *June*, 1895, the above-bounden *Henry Jones*, in the matter of the estate of *Thomas Jones*, deceased, was appointed administrator of the estate of [or, executor of the last will and testament of] said *Thomas Jones*, deceased, and letters of administration were directed to be issued to him upon his executing a bond according to law, in the said sum of *ten thousand seven hundred* dollars.

Now, therefore, if the said *Henry Jones*, as such administrator [or executor], shall faithfully execute the duties of the trust according to law, then this obligation to be void; otherwise to remain in full force and effect.

Signed, sealed, and delivered.

See No. 954. Justification of Sureties.

### No. 1000.—Bond with More than Two Sureties.

KNOW ALL MEN BY THESE PRESENTS, that *I, Timothy Markham*, as principal, am held and firmly bound unto the State of *California* in the sum of *eighty-four thousand* dollars, lawful money of the United States of America, to be paid to the said State of *California*, for which payment, well and truly to be made, I bind myself, my and each of my heirs, executors, and administrators, firmly by these presents.

And we, *John Shirley*, *R. A. Swain*, and *Thomas Davenport*, as

sureties, are severally held and firmly bound, and jointly with said *Timothy Markham*, are held and firmly bound unto the said State of *California* in the following sums, respectively, to wit: I, the said *John Shirley*, in the sum of *twenty thousand* dollars; I, the said *R. A. Swain*, in the sum of *fifty thousand* dollars, and I, the said *Thomas Davenport*, in the sum of *fourteen thousand* dollars, lawful money of the United States of America, to be paid to the said State of *California*, for the payment of which sums, well and truly to be made, we, and each of us, respectively, bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally as aforesaid, firmly by these presents.

Sealed with our seals, and dated this *third* day of *May*, 1895.

The condition of the above obligation is such, that whereas, by an order of the Superior Court of the County of *Sacramento*, State aforesaid, duly made and entered on the second day of *May*, 1895, the above-bounden *Timothy Markham* and one *Gordon Bennett* were appointed executors of the last will and testament of *Paul Clifford*, deceased, and letters testamentary were directed to be issued to them upon executing a bond, according to law, in said sum of *eighty-four thousand* dollars, being security as well for the personal property of the estate of said deceased as for the annual rents, issues and profits of the real estate of said deceased in his charge as executor.

Now, therefore, if the said *Timothy Markham*, as such executor, shall faithfully execute the duties of the trust according to law, then this obligation to be void, otherwise to remain in full force and effect.

(Signed, sealed, and delivered.)

See No. 954. Justification of Sureties.

NOTE 1.—In California every person to whom letters testamentary or of administration are directed to issue must, before receiving them, execute a bond to the State of California, with two or more sufficient sureties, to be approved by the Superior Court, or a Judge thereof. In form the bond must be joint and several, and the penalty must not be less than twice the value of the personal property, and twice the probable value of the annual rents, profits, and issues of real property belonging to the estate, which values must be ascertained by the Superior Court, or a Judge thereof, by examining, on oath, the party applying, and any other persons [that is to say if there is doubt as to the qualification of the surety evidence may be taken to ascertain the facts]. C. C. P., sec. 1388.

NOTE 2.—In Nevada the same, except all that part referring to the penalty is omitted. Gen. Stats., sec. 2740.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 5371.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 247L.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 4055.

NOTE 6.—In North and South Dakota the same as in California. Comp. Laws, sec. 5726.

NOTE 7.—In Wyoming the same as in California, except as to the approval of the bond, and they must justify in writing in double the amount of their individual undertaking. Laws 1890-91, p. 256.

NOTE 8.—In Washington the same as in California. Hill's Stats., sec. 906.

NOTE 9.—In Oregon the bond is in not less than double the probable value of the estate with one or more sureties. When the penal sum of the bond is over three thousand dollars three or more sureties may become severally liable for the amount of the bond. Hill's Laws, sec. 1088, 1089, p. 710.

NOTE 10.—In Arizona the same as in California. Rev. Stats. sec. 1035.

NOTE 11.—In Colorado the undertaking must be in the following form:



"Know all men by these presents, that we, A. B., C. D., and E. F., of the County of —, and State of Colorado, are held and firmly bound unto the people of the State of Colorado, in the penal sum of ten thousand dollars, current money of the United States, to which payment, well and truly to be made and performed, we and each of us, bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents.

"Witness our hands and seals, this *fifth day of May, 1895.*

"The condition of the above obligation is such, that if the above-bounden A. B., executor of the last will and testament of G. H., deceased (or administrator with the will annexed, as the case may be), do make, or cause to be made, a true and perfect inventory of all and singular the goods and chattels, rights, and credits, lands, tenements, and hereditaments, and the rents and profits issuing out of the same, of the said deceased, which have or shall come to the hands, possession, or knowledge of the said A. B., or into the possession of any other person for him, and the same so made, do exhibit in the County Court for the said County of —, as required by law, and also make and render a fair and just account of his actings and doings as such executor [or administrator] to said Court when thereunto lawfully required, and to well and truly fulfill the duties enjoined on him in and by said will, and shall moreover pay and deliver to the persons entitled thereto, all the legacies and bequests contained in said will, so far as the estate of the said testator will thereunto extend, according to the value thereof, and as the law shall charge him, and shall, in general, do all other acts which may, from time to time, be required of him by law, then this obligation to be void, otherwise to remain in full force and virtue." Which said bond shall be signed and sealed by the said executor [or administrator] and his sureties, and attested by the County Judge, and filed in his office. Mill's Stats., sec. 4690.

### No. 1001.—Bond—Special Administrator.

[TITLE OF COURT AND ESTATE.]

KNOW ALL MEN BY THESE PRESENTS, that we, *John Wilson* as principal and *John Doe and Richard Roe*, as sureties, are held and firmly bound to the *State of California* in the sum of *ten thousand* dollars, lawful money of the United States of America, to be paid to the said *State of California*, for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this *tenth day of May, 1895.*

The condition of the above obligation is such, that whereas, *John Wilson* has been appointed special administrator of the estate of *Henry Wiggins*, deceased; Now, therefore, if the said *John Wilson* shall faithfully execute the duties of *his trust* according to the law, then this obligation to be void, otherwise to remain in full force and effect.

Signed, *etc.*

See No. 954. Justification of Sureties.

NOTE 1.—In California the special administrator must give the usual bond in an amount as directed by the Court and he "must take the usual oath" and have it indorsed on his letters. C. C. P., sec. 1414.

This last requirement is a fair specimen of careless code forming. Why should the usual oath of a special administrator be indorsed on his letters, while the oath of the permanent administrator must be attached to his letters. Id., sec. 387.

NOTE 2.—In Nevada the same as in California, with the "usual oath" business omitted. Gen. Stats., sec. 2760.

NOTE 3.—In Idaho the same as in California, with the same "attached to" and "indorsed on" provisions. Rev. Stats., sec. 5393.

NOTE 4.—In Montana the same as in California, and the same must be indorsed on his letters. C. C. P., sec. 2503.

NOTE 5.—In Utah the same as in California. Comp. Laws, secs. 4054, 4078.

NOTE 6.—In North and South Dakota the same as in California. Comp. Laws, sec. 5747.

NOTE 7.—In Wyoming the same as in California to the satisfaction of Court or officer. Stats., 1890-91, sec. 4, pp. 259, 600.

NOTE 8.—In Washington no form of the bond is given by statute, but the following is drawn in compliance with the statute.



**Sec. 932.**—KNOW ALL MEN BY THESE PRESENTS, that we, *John Wilson* as principal, and *John Doe and Richard Roe*, as sureties, are held and firmly bound to the *State of Washington* in the sum of *ten thousand* dollars, lawful money of the United States of America, to be paid to the said *State of California*, for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this *tenth* day of *May*, 1894.

The condition of the above obligation is such, that whereas, *John Wilson* has been appointed special administrator of the estate of *Henry Wiggins*, deceased; now, therefore, if the said *John Wilson* shall faithfully execute the duties of *his trust* according to the law, and make and return into the Court as soon as practicable a true inventory of the goods, chattels, rights, and credits of the said deceased which shall come into his possession or knowledge; and that he will truly account for all the goods, chattels, debts, and effects of the deceased that shall be received by him as special administrator whenever required by the Court, and will deliver the same to the person who shall be appointed executor or administrator of the said deceased, or to such other person as shall be lawfully authorized to receive the same, then this obligation to be void, otherwise to remain in full force and effect.

Signed, etc.

**NOTE 9.**—In Oregon the special administrator has the same powers and gives the same bond required of him upon taking out general letters, except he is not authorized to pay debts or otherwise discharge any obligation against the deceased. See bond of administrator, etc., given on justifying. Hill's Laws, sec. 1092, p. 712.

**NOTE 10.**—In Arizona he must give such bond as the Probate Judge may direct, and the rest the same as in California. Rev. Stats., sec. 1058.

**NOTE 11.**—In Colorado the bond runs to the State, conditioned as follows: "The condition of the above obligation is such, that if the above-bounden C. D. shall well and honestly discharge the duties appertaining to his appointment as administrator, to collect, of the estate of A. B., late of the County of C., deceased, and shall make or cause to be made, a true and perfect inventory of all such goods, chattels, debts, and credits of the said deceased, as shall come to his (or her) possession or knowledge, and the same, in due time, return to the office of the County Judge of the proper county, and shall also deliver to the person or persons authorized by the said County Court, as executors or administrators, to receive the same, all such goods, chattels, and personal estate as shall come to his or her possession, as aforesaid, and shall, in general, perform such other duties as shall be required of him (or her) by law, then the above obligation to be void, otherwise to remain in full force and virtue." Mills' Stats., sec. 4705.

Such administrator must take and subscribe this oath:

I do solemnly swear (or affirm) that I will well and honestly discharge the trust reposed in me as collector, or administrator, to collect of the estate of A. B., deceased, according to the tenor and effect of the letters granted to me by the County Court of the said county of —, to the best of my knowledge and ability. So help me God." Id., sec. 4706.

## No. 1002.—Bond on Sale of Real Estate.

[TITLE OF COURT AND ESTATE.]

KNOW ALL MEN BY THESE PRESENTS, that we, *Mary Jones*, as principal, and *John Doe and Richard Doe*, as sureties, are held and firmly bound to the *State of California*, in the sum of *five thousand* dollars, lawful money of the United States of America, to be paid to the said *State of California*, for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this *thirtieth* day of *December*, 1895.

The condition of the above obligation is such, that whereas an order was made on the *seventh* day of *December*, 1894, by the Superior Court of the *City and County of San Francisco*, *State of California*, authorizing the above-named principal, as *administratrix of the estate of Thomas Jones*, deceased, to sell certain real estate belonging to the estate of said deceased, and requiring that an additional bond be executed by said *administratrix* in the sum above named.

Now, therefore, if the said *Mary Jones*, as such *administratrix*,

shall faithfully execute the duties of the trust according to law, then this obligation to be void, otherwise to remain in full force and effect.

Signed, *etc.*

See No. 954. Justification of Sureties.

NOTE 1.—In California if the bond given upon qualifying is not equal to twice the value of the personal property remaining in, or that will come into, the possession of the executor, including the annual rents, profits, and issues of real estate, and twice the probable amount to be realized on the sale of the real estate ordered to be sold, then the Court may require a new bond whenever the sale of real estate is ordered. C. C. P., secs. 1389, 1390.

NOTE 2.—In Nevada the same as in California the statute provides that the bond shall be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law. [Precisely as set out in the last clause of the above bond.] Gen. Stats., sec. 2740.

NOTE 3.—In Idaho the same as in California. Rev. Stats., secs. 5372, 5373.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 3011 and [Chap. VII same].

NOTE 5.—In Utah the same as in California. Comp. Laws, secs. 4056, 4057.

NOTE 6.—In North and South Dakota the same as in California. Comp. Laws, secs. 5727, 5728.

NOTE 7.—In Wyoming the same as in California. Stats. 1890-91, sec. 3, p. 256.

NOTE 8.—In Washington the same as in California, except the statute does not state what the conditions of the bond shall be. Hill's Stats., sec. 908, but, sec. 907, Id., is the same as sec. 189, Cal. C. C. P., and by implication it applies to all bonds where different conditions are not enacted.

NOTE 9.—In Oregon the general bond of the officer covers all his proceedings. Hill's Laws, secs. 1088, 1089, but, under its general power, the Court may demand a new and greater bond at any time.

NOTE 10.—In Arizona the same as in California. Rev. Stats., secs. 1036, 1037.

NOTE 11.—In Colorado the same as in Oregon. Mill's Stats., sec. 4721.

## No. 1003.—Bond of Guardian—Qualifying.

[TITLE OF COURT AND ESTATE.]

KNOW ALL MEN BY THESE PRESENTS, that we, *Mary Jones*, as principal, and *John Doe* and *Richard Roe*, as sureties, are held and firmly bound unto *William Jones*, a minor, in the sum of *one thousand* dollars, lawful money of the United States of America, to be paid to the said *William Jones*, minor, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this *twelfth* day of *December*, 1895.

The condition of the above obligation is such, that whereas an order was made by the Superior Court of the *City and County of San Francisco*, State of *California*, on the *tenth* day of *December*, 1895, appointing the above-bounden *Mary Jones* the guardian of the *person and estate* of said minor, and directing that Letters of Guardianship be issued to *her* upon *her* giving a bond to said minor, with sufficient sureties, to be approved by the Judge of said Superior Court, in the penal sum of *one thousand* dollars, conditioned that said guardian shall faithfully execute the duties of *her* trust, according to law.

Now, therefore, if the said *Mary Jones* shall faithfully execute the duties of *her* trust, according to law, then this obligation



shall be void and of no effect, else to remain in full force and virtue.

(Signed, sealed, and delivered.)

See No. 954. Justification of Sureties.

NOTE 1.—In California the statute provides that the Court must require of the guardian a bond conditioned that he will faithfully execute the duties of his trust according to law; and the following conditions shall form a part of said bond *without* being expressed therein:

1. To make an inventory of all the estate, real and personal, of his ward that comes to his possession or knowledge, and to return the same within such time as the Court may order.

2. To dispose of and manage the estate according to law, and for the best interest of the ward, and faithfully to discharge his trust in relation thereto, and also in relation to the care, custody, and education of the ward.

3. To render an account on oath of the property, estate, and moneys of the ward in his hands, and all proceeds or interests derived therefrom, and of the management and disposition of the same, within three months after his appointment, and at such other times as the Court directs, and at the expiration of his trust to settle his accounts with the Court, or with the ward, if he be of full age, or his legal representatives, and to pay over and deliver all the estate, money, and effects remaining in his hands, or due from him on such settlement, to the person who is lawfully entitled thereto. C. C. P., sec. 1751.

NOTE 2.—In Nevada the same as in California, except the California No. 3 is divided into Nos. 3 and 4. Gen. Stats., sec. 555.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 5777.

NOTE 4.—In Montana the same. C. C. P., sec. 2957.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4312.

NOTE 6.—In Wyoming the same bond as in California. Stats. 1890-91, sec. 8, p. 805.

NOTE 7.—In North and South Dakota the same as in California. Comp. Laws, sec. 5990.

NOTE 8.—In Washington the statute prescribes the conditions of the bond but not the recitals. The following form is applicable:

[Title of Court and Estate.]

KNOW ALL MEN BY THESE PRESENTS, that we, *Mary Jones*, as principal, and *John Doe* and *Richard Roe*, as sureties, are held and firmly bound unto the State of Washington, in the sum of *one thousand* dollars, lawful money of the United States of America, to be paid to the said *William Jones*, minor, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this *twelfth* day of *December*, 189*1*.

"The condition of this obligation is such, that if the above-bounden A. B., who has been appointed guardian for C. D., shall faithfully discharge the office and trust of such guardian, according to law, and shall render a fair and just account of his guardianship to the County Court of the County of C., from time to time, as he shall be thereto required by said Court, and comply with all the orders of said Court, lawfully made, relative to the goods, chattels, and moneys of such minor, and render and pay to such minor all moneys, goods, and chattels, title papers, and effects, which may come to the hands or possession of such guardian, belonging to such minor, when such minor shall be thereto entitled, or to any subsequent guardian, should such Court so direct, then this obligation shall be void, otherwise to remain in full force and virtue." Hill's Stats., sec. 1136; Stats. 1893, sec. 1, p. 287.

NOTE 9.—In Oregon the same as in California, except No. 3 provides that his accounts are to be rendered under oath, and an account is to be rendered within one year after his appointment and the California No. 3 is divided into Nos. 3 and 4. See Hill's Laws, vol. 2, sec. 2884.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1314.

NOTE 11.—In Colorado the same as in Washington, except the bond is taken to the people of the State of Colorado. Mills Stats., vol. 1, sec. 2078.

## No. 1004.—Bond of Guardian—Sale of Real Estate.

[TITLE OF COURT AND ESTATE.]

KNOW ALL MEN BY THESE PRESENTS, that we, *Mary Jones*, as principal, and *John Doe* and *Richard Roe*, as sureties, are held and firmly bound to *William Jones*, *Charlotte Jones*, and *Emma Jones*, wards of the above-bounden *Mary Jones*, in the sum of *fifteen hundred* dollars, lawful money of the United States of America, to be paid to the said wards, for which payment, well and truly to be



made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this *fifteenth* day of *February*, 1895.

The condition of the above obligation is such, that whereas an order was made on the *fourteenth* day of *February*, 1895, by the Superior Court of the said *City and County of San Francisco*, authorizing the above-named principal, as guardian of the *persons and estates of William Jones, Charlotte Jones, and Emma Jones*, minors, to sell certain real estate, the property of said minors, and bond in the sum above named was ordered to be given before the sale.

Now, therefore, if the said *Mary Jones*, as such guardian, faithfully execute the duties of *her* trust according to law, and shall sell the said real estate in the manner prescribed by law for sales of real estate by executors and administrators, and shall account for and dispose of the proceeds of the sale in the manner provided by law, then this obligation to be void, otherwise to remain in full force and effect.

(Signed, sealed, and delivered.)

[SEAL.]

See No. 954. Justification of Sureties.

NOTE 1.—In California, before a sale of a ward's real estate, a guardian must give a bond to the ward with condition to sell the land in the manner, and to account for the proceeds of the sale, as provided for by law. C. C. P., sec. 1788. All the provisions of law respecting sales and accounts of sales by executors and administrators are applicable to sales by guardians. *Id.*, sec. 1789.

NOTE 2.—In Nevada the same, except the bond runs in favor of the Probate Judge. Gen. Stats., secs. 579, 580.

NOTE 3.—In Idaho the same as in California. Rev. Stats., secs. 5808, 5809.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 3011.

NOTE 5.—In Utah the same as in California. Comp. Laws, secs. 4342, 4343.

NOTE 6.—In North and South Dakota the same as in California. Comp. Laws, secs. 6020, 6021.

NOTE 7.—In Wyoming the same as in California. Stats. 1890-91, secs. 12, 13, p. 312.

NOTE 8.—In Washington there is no distinction between sales by guardians and sales by executors and administrators. The bond given on qualifying covers all transactions until the further order of the Court. Hill's Stats., sec. 1147; Stats. 1893, pp. 85-88.

NOTE 9.—In Oregon the same as in Nevada, except the bond must be expressly conditioned to sell the land, and in the manner provided prescribed for the sale of real estate by executors and administrators, and to account for and dispose of the proceeds of the sale in the manner provided by law precisely as in the above form. Hill's Laws, vol. 1, sec. 5122, p. 1391.

NOTE 10.—In Arizona the same as in Nevada. Rev. Stats., secs. 1361, 1362.

NOTE 11.—In Colorado the same as in Washington. The bond given on qualifying is the only one necessary. Mills' Stats., vol. 1, sec. 2078. [See note to Bond of Guardian Qualifying.]

## No. 1005.—Certificate of Proof of Will, and the Facts Found.

[TITLE OF COURT AND ESTATE.]

STATE OF California, }  
City and County of Sacramento. } ss.

I, *R. C. Clark*, Judge of the said Superior Court, do hereby certify, that on the *second* day of *May*, 1895, the annexed instrument was admitted to probate as the last will and testament of

*Paul Clifford*, deceased, and, from the proofs taken and the examinations had therein, the said Court finds as follows:

That said *Paul Clifford* died on or about the *eleventh* day of *April, 1895*, in the County of *Sacramento, State of California*; that at the time of his death he was a resident of the County of *Sacramento*, aforesaid [*or that he left estate in said county*], *State of California*; that the said annexed will was duly executed by the said decedent,\* in the County of *Sacramento*, aforesaid, *State of California*, and signed by the said testator in the presence of *Moses King and Homer Willard*, the subscribing witnesses thereto; also that he acknowledged the execution of the same in their presence, and declared the same to be his last will and testament, and the said witnesses attested the same at his request in his presence and in the presence of each other; that the said decedent, at the time of executing said will, was at the age of eighteen years and upwards, was of sound and disposing mind, and not under duress, menace, fraud, or undue influence, nor in any respect incompetent to devise and bequeath *his* estate.

In witness whereof, I have signed this certificate, and caused the same to be attested by the Clerk of said Court, under the seal thereof, this *second* day of *May, 1895*.

[SEAL.]

Signed by Judge.

NOTE 1.—In California, if the court is satisfied, upon the proof taken or from the facts found by the jury, that the will was duly executed and that the testator was, at the time of its execution, of sound mind and not acting under duress, menace, fraud, or undue influence. A certificate of the proof, and the facts found, signed by the Judge and attested by the seal of the Court, must be attached to the will. C. C. P., sec. 1317.

NOTE 2.—In Nevada precisely the same in meaning, though not worded the same as in California. Gen. Stats., sec. 2690.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 5313.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2345.

NOTE 5.—In Utah the same as in Nevada. Comp. Laws, sec. 4006.

NOTE 6.—In North and South Dakota the same as in Nevada. Comp. Laws, sec. 5675.

NOTE 7.—In Wyoming the same as in Nevada. Stats. 1890-91, sec. 5, p. 249.

NOTE 8.—In Washington the statute provides that when the will is proven the Judge shall issue a certificate of probate, and if the proof fails to establish it, then he shall issue a certificate of rejection. Hill's Stats., sec. 862.

In fact the California statute in express words directs the Judge to do what he would do by virtue of his office of Judge if there were no statutory directions. The practice and forms in both States are the same.

NOTE 9.—In Oregon no certificate of either proof or rejection is made. When it is proved letters issue, and nothing more is necessary. Hill's Laws, sec. 1084, p. 709.

NOTE 10.—In Arizona the same as in Nevada. Rev. Stats., sec. 985.

NOTE 11.—In Colorado the same as in Oregon. Mill's Stats., sec. 4670.

## No. 1006.—Certificate—Lost or Destroyed Will.

[TITLE OF COURT AND ESTATE.]

I, *J. V. Coffey*, Judge of the Superior Court in and for said city and county, do hereby certify: That on *May 9, 1894*, *Henry M. Fair* died in the City and County of *San Francisco, State of California*, and at the time of *his* death was a resident of said

\* NOTE A.—At this point the latest work on "Probate Law Practice and Forms" inserts these words and parts of words in *h—lifetime*. This precaution is to rebut a possible presumption that the testator was not quite dead when he executed his very last will at "the county aforesaid."

city and county. That the said decedent in the City and County of San Francisco, State of California, in the presence of *Henry Clement and G. W. Jones* as subscribing witnesses executed his last will and testament. Also, that he acknowledged the execution of the same in their presence, and declared the same to be his last will and testament, and the said witnesses attested the same at his request, in his presence, and in the presence of each other. That the said decedent, at the time of executing said will, as aforesaid, was of the age of eighteen years and upwards; was of sound and disposing mind, and not under restraint, undue influence, menace, fraud, duress, or fraudulent misrepresentations, or in any respect incompetent to devise and bequeath his estate. That said will was in existence at the time of said testator's death, and it had not been annulled or revoked. That said will has since been by accident destroyed. That said will was in the words and figure following, to wit: [Here state the contents.] It is therefore ordered that this instrument be filed and recorded as the last will and testament of said *Henry M. Fair*, deceased, and that letters testamentary be issued to the executors named in said will.

In witness whereof, I have signed this certificate and caused the same to be attested by the Clerk of this Court under the seal thereof, this *tenth day of May, A. D. 1895.*

*J. V. COFFEY*, Judge.

Attest:

By

, Clerk.

[SEAL.]

NOTE 1.—In California when a lost will is established, the provisions thereof must be distinctly stated and certified by the judge under his hand and the seal of the Court, and the certificate must be filed and recorded as other wills are filed and recorded, and letters testamentary or of administration with the will annexed must be issued thereon in the same manner as upon wills produced and duly proved. C. C. P., sec. 1304.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2706.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5327.

NOTE 4.—In Montana the same. C. C. P., sec. 2372.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4019.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5639.

NOTE 7.—In Wyoming the same. Stats., 1890-91, p. 250.

NOTE 8.—In Washington the same. Hill's Stats., sec. 830.

NOTE 9.—In Oregon the same under the Court's equity powers.

NOTE 10.—In Arizona the same. Rev. Stats., sec. 999.

NOTE 11.—In Colorado the same. Hill's Stats., sec. 4672.

### No. 1007.—Citation. [Summons.]

[TITLE OF COURT AND ESTATE.]

THE PEOPLE OF THE STATE OF *California* to *Frederick Wallace and Hiram Wallace*, Greeting:

By order of this Court, you are hereby cited and required to appear before the *Judge* of this Court, at the courtroom thereof, at the *City Hall*, in the *City and County of San Francisco*, on *Saturday, the tenth day of December, 1895, at eleven o'clock* in the



forenoon of that day, then and there to show cause, if any you have, why *Mary Jones, the mother of said minors, William Jones, Charlotte Jones, and Emma Jones, children of Thomas Jones, late of said city and county, deceased, should not be appointed the guardian of the persons and estates of the said minors.*

Witness, the Hon. *John F. Finn*, Judge of the said Superior Court in and for the *City and County of San Francisco, State of California*, with the seal of said Court affixed, this the *third* day of *December, 1895*.

[SEAL.]

Attest:

, Clerk.

NOTE 1.—In California a citation is a summons.

It must be directed to the person to be cited, signed by the Clerk, and issued under the seal of the Court, and must contain:

1. The title of the proceeding;

2. A brief statement of the nature of the proceeding;

3. A direction that the person cited appear at a time and place specified.

It may be issued by the Clerk upon the application of any party without an order of the Judge, except in cases in which such order is by law expressly required.

It must be served in the same manner as a summons is served. C. C. P., secs. 1707-1709. See Summons.

NOTE 2.—In Nevada the same as in California, although there are no specific directions respecting its contents, but necessarily it will contain similar directions. It may be directed either to the Sheriff of the county or to the person to be cited. It must be served in the same manner as a summons is served. See Summons. Gen. Stats., secs. 2957, 2958.

NOTE 3.—In Idaho the same as in California. Rev. Stats., secs. 5653-5660.

NOTE 4.—In Montana the same as in California. C. C. P., secs. 2914-2918.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 4239.

NOTE 6.—In North and South Dakota the same as in California. Comp. Laws, secs. 5952-5954.

NOTE 7.—In Wyoming the same as in California. Stats. 1890-91, secs. 3-5, p. 302.

NOTE 8.—In Washington it is directed to the Sheriff, and must briefly state the nature of the proceedings. It must be served at least ten days before the term at which it is made returnable. If the Court issues it on its own motion, then it is made returnable, so as to allow the person cited time to attend the Court as directed. Hill's Stats., secs. 84-850.

NOTE 9.—In Oregon the statute directs that the Court shall, in proper cases, cite persons to appear and answer. No special directions are given, but the California form will be full enough. Hill's Laws, vol. 1, secs. 1121-1125, p. 721.

NOTE 10.—In Arizona the same as in California. Rev. Stats., secs. 1281-1283.

NOTE 11.—In Colorado the same as in Nevada and Washington. Mills' Stats, secs. 2413-2468.

## No. 1008.—Consent to Sale by Guardians.

[TITLE OF COURT AND ESTATE.]

To the Honorable the Superior Court:

The undersigned, the *father and mother and the only sister and brother of Frank McDonald, a minor*, hereby consent to the sale of the *real estate* described in the petition of the guardian of the *person and estate* of said minor now on file in said Court. We are all and the only persons interested in said *minor* and his estate.

(Signed)

*Gasper McDonald,*

Father of said minor.

*Matilda McDonald,*

Mother of said minor.

*Rasper McDonald,*

Brother of said minor.

*Clasperinda McDonald,*

His sister.

NOTE 1.—In California a copy of the order must be personally served on the next of kin of the ward, and on all persons interested in the estate, at least fourteen days before the hearing of the petition [or must be published at least once a week for three successive weeks in a newspaper printed in the county, or, if there be none printed in the county, then in such newspaper as may be specified by the Court in the order. If written consent to making the order of sale is subscribed by all persons interested therein and the next of kin, notice need not be served or published]. C. C. P., sec. 1743.

NOTE 2.—In Nevada the same, with part in the brackets omitted. Gen. Stats., sec. 574.

NOTE 3.—In Idaho the same as in Nevada, for three weeks. Rev. Stats., sec. 5803.

NOTE 4.—In Montana the same as California. C. C. P., sec. 3006.

NOTE 5.—In Utah the same as California, for ten days before the hearing. Comp. Laws, sec. 4337.

NOTE 6.—In North and South Dakota the same as in Idaho. Comp. Laws, sec. 6015.

NOTE 7.—In Wyoming the same as in Utah and part in brackets omitted. Stats. 1890-91, sec. 7, p. 312.

NOTE 8.—In Washington, Oregon, and Colorado not applicable, *except* that there is no place in the United States where the *written consent of all persons interested* would not be sufficient authority for almost any order. The difficulty is to ascertain with reasonable exactness who is interested.

NOTE 9.—In Arizona the same as in Montana. Rev. Stats., sec. 1356.

## No. 1009.—Contest of Will.

[TITLE OF COURT AND ESTATE.]

Now comes *Henry Fair*, son and heir of said *Henry M. Fair*, the said deceased, and contesting the will filed in the Court purporting to be the last will of said deceased, for ground of contest states.

[IF THE CONTEST IS ON THE GROUND OF INCOMPETENCY.]

*The said Henry M. Fair was not, when said alleged will was executed, of sound and disposing mind. In this: The said Henry M. Fair was under the influence of alcoholic drink, and other intoxicants to such degree that he did not know what he was doing when he executed said will.*

[IF ON THE GROUND OF DURESS STATE.]

*The said Henry M. Fair was, when said alleged will was executed, acting under the undue influence of William Jones. In this: The said deceased was a Protestant and, when said alleged will was executed a member of the Methodist Church. That he had an antipathy to Unitarians, and all those not believing in the divinity of Jesus Christ that approached monomania. That he had frequently said that a person not believing in the divinity of Jesus Christ had no right to the possession or enjoyment of property [the foundation of all property being in God and given by His Son Jesus to man on condition that mankind would believe in Him].*

*That the said William Jones was with said deceased when said alleged will was executed; that for many years he, the said Jones, had been and then was, a constant companion and warm friend of deceased, and deceased had absolute confidence in every thing said Jones said. That on the day said alleged will was executed the said Jones said to deceased that this contestant was a Unitarian, and to his, Jones', own knowledge, did not believe in the divinity of Jesus Christ. That deceased then and there, and acting under the information so obtained, did not provide for contestant in his alleged*

*will; and contestant alleges that at the time said will was made he did believe in the divinity of Jesus Christ and he does now believe in His Divinity. That if said Jones had not made the statements aforesaid deceased would have provided for contestant in his last will.*

[IF ON THE GROUND THAT IT WAS NOT PROPERLY EXECUTED.]

*That said alleged will was not properly attested and not properly executed in this: The said deceased did not sign said will in the presence of alleged witnesses, nor did he acknowledge to said witnesses that the signature to said will was his, or that it was made by his authority. Nor did said witnesses sign said will as witnesses in the presence of the testator, nor in the presence of each other.*

[IF THE WILL PURPORTS TO BE OLOGRAPHIC, THEN]

*That said alleged will was not entirely written, dated, and signed by the hand of the testator himself. In this: the figures in the last line 189-, are in print and the word AND in the third line from the top was not written by deceased.*

Wherefore contestant prays that said alleged will be denied probate.

Signed, *etc.*

NOTE 1.—In California a will may be contested on any of the following grounds:

1. The competency of the decedent to make a last will.
2. The freedom of the decedent at the time of its execution from duress, menace, fraud, or undue influence;
3. The due execution of it and attestation by the decedent or subscribing witnesses;

or  
4. Any other questions substantially affecting the validity of the will; The questions at issue must, on request of either party in writing (filed three days prior to the day set for the hearing), be tried by a jury. If no jury is demanded, the Court must try and determine the issues joined. On the trial, the contestant is plaintiff, and the petitioner is defendant. C. C. P., sec. 1312.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2686, as amended Stats. 1891, pp. 104, 105, but all the California grounds are not enumerated; but they are really included by intendment.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5308.

NOTE 4.—In Montana, the same. C. C. P., sec. 2340.

NOTE 5.—In Utah, the same. Comp. Laws, secs. 4002-4007.

NOTE 6.—In North and South Dakota, the same. Comp. Laws, sec. 5671.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 1, p. 248.

NOTE 8.—In Washington the same as in California, but the grounds of contest are not enumerated. Hill's Stats., sec. 872.

NOTE 9.—In Oregon a will cannot be proven unless it is executed according to the law of the State. The whole law is embraced in the words "When a will is proven letters . . . shall issue." Hill's Laws, sec. 1084, p. 709.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 990.

NOTE 11.—In Colorado the contest is by bill in equity, and the grounds are the same as in California, and as many more as ingenuity can invent. Mills' Stats., sec. 4679.

## No. 1010.—Creditor's Claim—Contingent.

[TITLE OF COURT AND ESTATE.]

The undersigned, a creditor of *Thomas Jones*, deceased, presents his claim against the estate of said deceased, for approval, as follows, to wit:

On June the first, 1893, the undersigned and said deceased entered into an agreement in writing, as follows:



The undersigned conveyed to said deceased the north half of section six, township eight, range twelve east, M. D. B. & M., for eight dollars per acre, paid by deceased at the date of said conveyance. At the same time, and as part of said contract of conveyance, said deceased and the undersigned agreed that if during a period of four years from the date of said deed said tract of land should, with proper cultivation, net deceased a profit of forty dollars an acre, average for said term of four years, then at the expiration of said term deceased agreed to pay the undersigned ten dollars an acre for each acre contained in said tract. A copy of said conveyance and contract is hereto attached and referred to and made part hereof and marked Exhibit "A."

JOHN SMITH.

[Affidavit]: The same as in Creditor's Claim down to the words "*dollars is justly.*" Then add [to become due according to the contracts in the foregoing claim described, four years from June 1, 1893]. That no payments have been made thereon which are not credited, and there are no offsets to the same to the knowledge of said claimant.

(Subscribed and sworn to.)

See notes to No. 1015.

### No. 1011.—Creditor's Claim—Action Pending.

[TITLE OF COURT AND ESTATE.]

John Brown presents this claim against the estate of John Smith, deceased, as follows:

That at the time of the death of said John Smith an action was pending, brought by this affiant against said deceased in the Superior Court of the City and County of San Francisco, to recover \$1,000, money had and received by the said John Smith for the benefit of this affiant. That said case was at issue at the time of the death of said decedent, and is now ready for trial in said Court. Case No. 10,173. Department No. 12 of said Court.

JOHN BROWN.

John Brown, being sworn, says: [The same as in form No. 1010, Contingent Claim].

### No. 1012.—Creditor's Claim—Not Due.

[TITLE OF COURT AND ESTATE.]

The undersigned, a creditor of Thomas Jones, deceased, presents his claim against the estate of said deceased for approval, to wit:

ESTATE OF *Thomas Jones*, Deceased.

To *John Smith*, Dr.

To principal of promissory note, dated May 5, 1893,  
hereto attached..... \$1,000 00

To interest on same, from May 5, 1893, at two per cent per month to this date [which note is in the words and figures as follows]:..... \$0 00

\$1,000

San Francisco, May 5, 1893.

Three years after date, I promise to pay to John Smith, or order, the sum of one thousand dollars, with interest at the rate of two per cent per month, for value received.

THOMAS JONES.

STATE OF California, }  
City and County of San Francisco. } ss.

John Smith, whose foregoing claim is herewith presented to the administratrix of the estate of said deceased, being duly sworn, says that the amount thereof, to wit, the sum of one thousand dollars, with accruing interest at the rate of two per cent per month, on the sum of one thousand dollars, is justly due to said claimant, but is not payable until the expiration of three years from May 5, 1893; that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of said claimant.

(Subscribed and sworn)

See notes to No. 1015.

### No. 1013.—Creditor's Claim—Affidavit that Creditor had no Notice, etc.

[TITLE OF COURT AND ESTATE.]

[Use the same form as in other creditor's claims down to the affidavit, then]

STATE OF CALIFORNIA, }  
City and County of San Francisco. } ss.

John Smith, being first duly sworn, deposes and says: That he, whose foregoing claim is herewith presented to the executor of said deceased, is a <sup>(1)</sup> resident of the City of Rochester, State of New York; or, that affiant is. <sup>(2)</sup> That he had no notice of the death of said deceased until more than one year from the date of the first publication of notice to creditors in this estate by reason of affiant being all said time of publication out of this State and in the State of New York. That decree of distribution has not been entered in said estate, and for that reason he makes this affidavit. <sup>(3)</sup> That the amount of said claim, to wit, the sum of one thousand dollars, is justly due to the said claimant; that no payments have been made thereon which are not credited; and that there are no offsets to the same to the knowledge of said affiant.

(Subscribed and sworn to.)

See notes to No. 1015.

(1) Firm or corporation as the case may be; insert names of individuals composing copartnership; if a corporation, so state, giving name of State in which same was organized

(2) State fully capacity in which affiant acts. If a member of firm, say so; if a managing agent, state why it is not sworn to by one of the principals; if an officer of a corporation, state what office; if an individual claimant, so state.

(3) Firm or corporation.

### No. 1014.—Creditor's Claim Order, Allowing Payment of, When not Presented Within Time Ordered.

[TITLE OF COURT AND ESTATE.]

It appearing to the Court that John Smith had no notice of the death of said deceased, or of the order of publication of notice to creditors, or of publication of notice to creditors herein until after the time had expired to present claims [*with an exception, if any*], and the decree of distribution in said estate not having been entered, it is ordered that the said claim may be presented to the executor of said estate with the same effect as if it had been presented before the time had expired for the presentation of claims.

(Signed)

See notes to No. 1015.

NOTE 1. In California all claims arising upon contracts, whether the same be due, not due, or contingent, must be presented within the time limited in the notice, and any claim not so presented is barred forever; *provided, however*, that when it is made to appear by the affidavit of the claimant, to the satisfaction of the Court, or a Judge thereof, that the claimant had no notice [of the time in which to present his claim] by reason of being out of the state, it may be presented at any time before a decree of distribution is entered. C. C. P., sec. 1493.

NOTE 2.—In Nevada a claim not presented within four months after the first publication is barred; *provided*, if it be not then due, or if it be contingent, it may be presented within four months after it becomes due; *and* it appears by the affidavit of the claimant, to the satisfaction of the executor or administrator *and* Probate Judge, that the claimant had no notice, as by reason of the absence from [the State], it may be presented at any time before a decree of distribution is entered. Stats. 1891, sec. 8, p. 105.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 5163.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2603. But claims arising upon contracts *hereafter made* [after the adoption of the C. C. P.] are regulated precisely as provided in sec. 1493, Cal. C. C. P. above quoted.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 4123.

NOTE 6.—In North and South Dakota the same as in Montana. Comp. Laws, sec. 5790, except as to a deficiency due on foreclosure.

NOTE 7.—In Wyoming the same as in California. Stats., 1890-91 sec. 3, p. 270.

NOTE 8.—In Washington, unless the claim is presented within one year from the first publication of notice to creditors, it is barred without any reservations whatever. Hill's Stats., sec. 979.

NOTE 9.—In Oregon before the time of publication has expired the proof of it must be filed, and a claim not presented within six months after the first publication of the notice is not barred, but it cannot be paid until the claims presented within that period have been satisfied; and if the claim be not then due, or if it be contingent, it shall nevertheless be presented as any other claim. Until the administration has been completed, a claim against the estate not barred by the statute of limitations may be presented, allowed, and paid out of any assets then in the hands of the executor or administrator not otherwise appropriated or liable. Hill's Laws, sec. 1132, p. 724.

NOTE 10.—In Arizona the same as in Montana. Rev. Stats., sec. 1110.

NOTE 11.—In Colorado any claim due or not due may be presented for allowance and settlement. No distinction is made. See notes to following form.

### No. 1015.—Creditor's Claim—Mortgage.

[TITLE OF COURT AND ESTATE.]

The undersigned, a creditor of *Thomas Jones*, deceased, presents his claim against the estate of said deceased, for approval, as follows, to wit:



ESTATE OF *Thomas Jones*, Deceased,To *John Smith*, Dr.

To principal of promissory note, dated May 5, 1893, hereto attached.....	\$1,000 00
To interest on same, from May 5, 1893, at two per cent per month, to this date.....	30 00
To cash loaned April 1, 1893.....	300 00
To agreed price of horse sold and delivered April 29, 1893	170 00

---

\$1,500 00

[Copy of Promissory Note Attached.]

\$1,000.

San Francisco, May 5, 1893.

Thirty days after date, I promise to pay to *John Smith*, or order, the sum of one thousand dollars, with interest at the rate of two per cent per month, for value received.

THOMAS JONES.

[If the claim is founded on a recorded mortgage the practice is to describe the rate and mortgage and then attach a copy of them as an exhibit, as follows: The said mortgage was duly acknowledged so as to entitle it to be recorded, and it was on the 3d day of May, 1893, duly recorded in the office of the County Recorder of Fresno County, California, in Book "A" of Mortgages, at page 137, *et seq.*, a copy of which note and mortgage, with all indorsements thereon, is hereto attached and made a part of this instrument and marked Exhibit "A."]

STATE OF *California*, }  
 City and County of *San Francisco*, } ss.

*J. Long*, being first duly sworn, deposes and says: That [the corporation, or partnership] whose foregoing claim is herewith presented to the [executor or administrator of said deceased, is a (A) corporation organized under the laws of the State of California, or is a partnership, etc.]; that affiant is (B) [the president, secretary, or a member of said partnership] and knows of his own knowledge all the facts of said claim, or he makes this affidavit on behalf of said *J. Long*, who is absent from the State, affiant knowing all the facts of said claim or any other good reason], and for that reason he makes this affidavit on behalf of said (c) [corporation, etc.] That the amount of said claim, to wit, the sum of [one thousand dollars], is justly due to the said claimant, that no payments have been made thereon which are not credited, and that there are no offsets to the same to the knowledge of said affiant. [In Oregon also state that there is no just counterclaim to the knowledge of affiant].

(Subscribed and sworn.)

(A) Firm or corporation as the case may be; insert names of individuals composing copartnership; if a corporation, so state, giving name of State in which same was organized.

(B) State fully capacity in which affiant acts. If a member of a firm, say so; if a managing agent, state why it is not sworn to by one of the principals; if an officer of a corporation, state what office; if an individual claimant, so state.

(C) Firm or corporation.

NOTE 1.—1st. In California every claim which is due, when presented to the executor or administrator, must be supported by the affidavit of the claimant, or some one in his behalf, that the amount is justly due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant. If the claim be not due when presented, or be contingent, the particulars of such claim must be stated. When the affidavit is made by a person other than the claimant he must set forth the reason why it is not made by the claimant. The executor or administrator may also require satisfactory vouchers in support of the claim. C. C. P., sec. 1494.

2d. When a claim is presented the executor or administrator he must indorse thereon his allowance or rejection with the day and date thereof. If he allow the claim it must be presented to a Judge of the Superior Court [to whom the proceeding has been assigned] for his approval, who must in the same manner indorse upon it his allowance or rejection. If the executor or administrator, or the Judge, refuse or neglect to indorse such a allowance or rejection for ten days after the claim has been presented to him, such refusal or neglect may, at the option of the claimant, be deemed equivalent to a rejection on the tenth day; and, if the presentation be made by a notary, the certificate of such notary under seal shall be *prima facie* evidence of such presentation and the date thereof. If the claim be presented to the executor or administrator before the expiration of the time limited for the presentation of claims the same is presented in time, though acted upon by the executor or administrator and by the Judge, after the expiration of such time. *Id.*, sec. 1497.

3d. Every claim allowed by the executor or administrator, and approved by a Judge of the Superior Court, or a copy thereof, as hereinafter provided, must, within thirty days thereafter, be filed in the Court, and be ranked among the acknowledged debts of the estate, to be paid in due course of administration. If the claim be founded on a bond, bill, note, or any other instrument, a copy of such instrument must accompany the claim, and the original instrument must be exhibited, if demanded, unless it be lost or destroyed, in which case the claimant must accompany his claim by his affidavit, containing a copy or particular description of such instrument, and stating its loss or destruction. If the claim, or any part thereof, be secured by a mortgage, or other lien which has been recorded in the office of the recorder of the county in which the land affected by it lies it shall be sufficient to describe the mortgage or lien, and refer to the date, volume, and page of its record. If, in any case, the claimant has left any original voucher in the hands of the executor or administrator, or suffered the same to be filed in Court, he may withdraw the same when a copy thereof has been already, or is then, attached to his claim. A brief description of every claim filed must be entered by the Clerk in the register, showing the name of the claimant, the amount and character of the claim, rate of interest, and date of allowance. *Id.*, sec. 1497.

NOTE 2.—1st. In Nevada claims must be supported by the claimant's affidavit that the amount is justly due, that no payments have been made thereon, and that there are no offsets to the same, to his knowledge or other affiant; *provided*, that, when the affidavit is made by any other person, he shall set forth the reasons it is not made by the claimant. The executor or administrator may also require satisfactory proofs in support of the claim. The amount of interest shall be computed and included in the statement and the rate of interest determined; *provided*, that no claim which shall have been due and payable thirty days prior to the death of the deceased shall bear greater interest than ten per cent per annum from the date of the letters. Gen. Stats., sec. 2799.

2d. The same as in California 2d, except that after the words "evidence of such presentation" follows the words "and rejection, and, if made by any person other than the claimant or notary, the affidavit of such person to the fact shall be *prima facie* evidence of such presentation and rejection." *Id.*, sec. 2801.

3d. The third is the same as in California, except: "If the claim be founded on a bond, bill, note, or other instrument, the original instrument shall be presented, and the allowance and approval, or rejection, shall be indorsed thereon, or be attached thereto. And in all cases the claimant shall be permitted to withdraw his claim on leaving a certified copy, with a receipt indorsed thereon by himself or his agent. In addition, it is provided that if such original instrument be lost or destroyed, then the claimant is required to file his affidavit, particularly describing such instrument, and stating the loss or destruction thereof, upon which affidavit the indorsement hereinafter mentioned shall be made. *Id.*, sec. 2802.

NOTE 3.—In Idaho all provisions the same as in California. Rev. Stats., secs. 5464, 5466, 5467.

NOTE 4.—In Montana the same in all respects as in California. C. C. P., secs. 2600-2604.

NOTE 5.—In Utah all parts the same as in California. Comp. Laws, secs. 4124, 4126, 4127.

NOTE 6.—In North and South Dakota the same as in California. Comp. Laws, secs. 5791-5794.

NOTE 7.—In Wyoming the same as in California. Stats. 1890-91, sec. 4, p. 270.

NOTE 8.—In Washington the corresponding section to section 1494 of the California C. C. P. is entirely as follows: Every claim presented to the administrator shall be supported by the affidavit of the claimant that the amount claimed is justly due; that no payments have been made thereon; and that there are no offsets to the same, to the knowledge of the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers to be produced in support of the claim. Hill's Stats., sec. 980.

When the claim is presented as above directed there must be indorsed on it by the presentee his allowance or rejection, with the day and date thereof. If the claim



is allowed, it must be presented to the Judge of the Court having jurisdiction, who shall indorse it in the same manner. If the executor or administrator reject the claim he shall notify the claimant thereof. *Id.*, sec. 981.

The Washington substitute for California, section 1397, is, every claim which has been allowed by the executor or administrator and the said Judge shall be filed in the Court, and be ranked among the acknowledged debts of the estate, to be paid in course of the administration. *Id.*, sec. 982.

NOTE 9.—In Oregon every claim presented to the executor or administrator shall be verified by the affidavit of the claimant, or some one on his behalf, who has personal knowledge of the facts, to the effect that the amount claimed is justly due; that no payments have been made thereon, except as stated; and that there is no *just counterclaim* to the same, to the knowledge of the affiant. When it appears or is alleged that there is any written evidence of such claim, the same may be demanded by the executor or administrator, or that its nonproduction be accounted for. *Hill's Laws*, sec. 1133, p. 724. When the claim is presented to the executor or administrator, if he shall be satisfied that the claim thus presented is just, he shall indorse upon it the words "Examined and approved," with the date thereof, and sign the same officially, and shall pay such claim in due course of administration; but, if he shall not be so satisfied, he shall indorse thereon the words "Examined and rejected," with the date thereof, and sign the same officially. He must keep a list of all demands presented, and every three months file a statement of them with the County Court, stating whether they have been allowed or rejected. If he refuses to allow a claim the claimant may present his claim to the County Court, and then the administrator is cited to show cause. The judge takes the evidence, and, if he allows the claim, it is a judgment. *Id.*, sec. 1134, p. 725.

NOTE 10.—In Arizona the same in effect as in California 1st. Also in addition if the executor or administrator pays *actual* debts without due presentation, then, on the hearing of the accounts, the Court must allow them. *Rev. Stats.*, sec. 1111. This in effect does away with the necessity of presentation and allowance of claims. In other respects the other provisions of the statute are the same as in California. *Id.*, secs. 1113, 1114.

NOTE 11.—In Colorado the executor or administrator gives notice to creditors. On the day named in the notice the creditor presents his claim to the Court. If no objection is made to it the creditor may be permitted to swear in Court that his claim is just and unpaid, after allowing all just credits, and then, if no objection is made, the claim becomes adjudicated. No claimant has a right to testify, but he may be required to do so. It will be seen from the foregoing that no form of claim like the one aforesaid can be used. *Mills' Stats.*, secs. 4781-4788. Also, generally the manner of exhibiting claims against estates is by filing in the County Court the account, or instrument of writing, or an exemplification of the record whereon such claim is founded. *No formal pleadings are necessary* [as a glance at her complicated and tedious system of obstructions seemed to indicate the necessity] but, in all cases, before a debt can be paid an issue must be framed, *heard*, and *determined* in the same manner as in actions before Justices of the Peace. *Id.*, secs. 4786, 4787.

## No. 1016.—Creditor's Claim—Lost Instrument.

[TITLE OF COURT AND ESTATE.]

John Brown presents his claim against the estate of John Smith, deceased, as follows:

On June 10, 1894, the said deceased, for a valuable consideration, made executed, and delivered to this claimant his certain promissory note, in words and figures as follows:

[Copy of note.]

That there is now due on said note [here state the amount due as in form No. 1015].

That on June 30, 1895, the said note was in affiant's coat pocket, in his room at the Church Street Hotel, Sacramento, California. That on June 30, 1895, said hotel was destroyed by fire and said note was at the same time destroyed by fire.

(Signed) JOHN BROWN.

STATE OF California,  
City and County of San Francisco. }

John Brown, being duly sworn, says that he is the John Brown in the aforesaid claim mentioned. That he knows the contents of said claim, and it is true. That the amount of said claim, to



wit, \$10,000, is justly due claimant; that no judgments have been made thereon [which are not credited]; and there are no offsets to the same to the knowledge of said affiant.

(Subscribed and sworn to.)

### No. 1017.—Creditor's Claim—Judgments.

[TITLE OF COURT AND ESTATE.]

The undersigned, A. Smith, a creditor of John Wilson, deceased, presents his claim against the estate of said deceased for approval, as follows, to wit:

[Here insert a certified copy of the judgment in the action—not a copy of the *docket*, but the *judgment*, if under the practice one is made in the case.]

(Signed) A. SMITH.

[Verified as in No. 1010.]

NOTE 1.—In California a judgment against the decedent must be presented to the executor or administrator, like [the same as—in the same manner] any other claim. C. C. P., sec. 1505.

In California it is not practicable to present the judgment, because practically it is difficult to take hold of a judgment, it being the final [words] determination of the rights of the parties to an action. *Id.*, sec. 577. The legal conclusion deduced from the words of the foreman of a jury or Judge are entered by the Clerk in a book (*Id.*, sec. 664), and when so entered become the judgment. It is manifest that they cannot be presented, therefore the next best thing is a copy of the entry. Nevada has surmounted the difficulty as follows:

NOTE 2.—In Nevada a *certified copy* of such judgment is presented to the executor or administrator, and a *lowed* and filed, or rejected, as any other claim, but need not be supported by the affidavit of the claimant; and, if justly due and unsatisfied, shall be paid in due course of administration. Gen. Stats., sec. 2810.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 5475.

NOTE 4.—In Montana the same as in California. C. C. P., secs. 2615, 2616.

NOTE 5.—In Utah the same as in California. Comp. Laws., sec. 4135.

NOTE 6.—In North and South Dakota the same as in California. Comp. Laws., sec. 5803, sub. 3.

NOTE 7.—In Wyoming the same as in California. Stats. 1890-91, sec. 14, p. 272.

NOTE 8.—In Washington the same as in Nevada, except the words "*certified copy*" are necessary. Hill's Stats., sec. 991.

NOTE 9.—In Oregon the same as in Nevada. Hill's Laws, sec. 1136, p. 726.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1122.

NOTE 11.—In Colorado see Creditor's Claim, Generally.

### No. 1018.—Creditor's Claim—Certificate of Notary.

[TITLE OF COURT AND ESTATE.]

I, *James V. Moson*, a Notary Public, in and for the *City and County of San Francisco, State of California*, hereby certify that on the *fifth day of May, 1895*, at said city and county, I presented the claim of *A. B.* against the estate of *C. L.*, deceased, to *E. F.*, executor of said estate, at the place stated in the notice to creditors published in said estate. That the said executor then and there took said claim into his possession from my hands, read the same and retained said possession. I further certify that before presenting said claim I made a correct copy thereof, and said copy is attached to this certificate and made a part of this certificate. [Any other facts may be stated, such as

destruction of the claim by the executor, or refusal to receive it, or receiving it and returning it to the Notary.]

Witness, *etc.* (and signed and sealed with notarial seal).

See notes to No. 1015.

### No. 1019.—Creditor's Claim—Back Indorsement.

No. 17392.

Recorded M. B. P. Page 327.

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Superior Court,  
City and County of San Fran-  
cisco,  
Department No. 9.

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In the Matter of the Estate of  
*THOMAS JONES*,  
Deceased.

---

Claim of  
*JOHN SMITH*  
For \$1,000.

---

The within claim presented  
to the executor of said deceased  
is allowed and approved for

\$1,000, this 10th day of May,  
1895.

*H. WILSON*,  
Executor.

---

Allowed and approved for  
\$1,000, this 10th day of May,  
1895.

*J. V. COFFEY*,  
Judge.

---

Or,  
The within claim rejected  
this 10th day of May, 1895.

*H. WILSON*,  
Executor.

---

Filed and registered this 10th  
day of May, 1895.

*M. C. HALEY*,  
Clerk.

NOTE.—All the statutes referred to under this head require creditor's claims to bear evidence on their backs or elsewhere of their history. This form will answer for all places

### No. 1020.—Decree Setting Apart Homestead for Use of Family.

[TITLE OF COURT AND ESTATE.]

*Mary Jones*, the administratrix of the estate of *Thomas Jones*, deceased, having, on the sixth day of July, 1895, made application to the Judge of this Court, by petition, for an order setting apart, for the use of the family of said deceased, the homestead in said petition and hereinafter particularly described, together with the dwelling-house thereon and its appurtenances; or, if the order is made by the Court without petition, or upon verbal application in open court, then say—It is ordered that all that certain lot, (describing it) be and the same is, *etc.*, set apart, *etc.*

And all and singular the law and the evidence being by the Court understood and considered, it is ordered, adjudged, and decreed, that all that certain lot, piece, or parcel of land, described in said petition as situate in the City and County of San Francisco, State of California, and described as follows, to wit:

## [Description.]

Together with the dwelling-house thereon and its appurtenances, be, and the same is hereby, set apart for the use of the family of said *Thomas Jones*, deceased [or to said *Mary Jones*]; and that the same shall not be subject to administration;

And it is further ordered that a certified copy of this decree be recorded in the office of the County Recorder of said *City and County of San Francisco*.

Signed by

### No. 1021.—Decree Setting Apart Property Exempt— Court's Motion.

[TITLE OF COURT AND ESTATE.]

It is ordered that all the property described in the inventory, filed herein, exempt from execution, be and the same is, by this order, set apart for the use of *Mary Jones*, widow of said *Henry Jones*, deceased, including the homestead, if any there be selected, designated, and recorded, *provided* said homestead was selected from the common property belonging to the said deceased and his said widow, or from the separate property of the persons selecting or joining in the selection of the same.

Witness, *etc.*

NOTE 1.—In California, at any time before the estate is closed [after inventory returned], the Court may, on its own motion or on petition, set apart for the use of the surviving husband or wife, or, in case of his or her death, to the minor children of the decedent, all the property exempt from execution, including the homestead selected, designated, and recorded; provided such homestead was selected from the common property, or from the separate property of the persons selecting or joining in the selection of the same. If none has been selected, designated, and recorded, or, in case the homestead was selected by the survivor out of the separate property of the decedent, the decedent not having joined therein, the Court must select, designate, and set apart, and cause to be recorded, a homestead for the use of the surviving husband or wife and the minor children; or, if there be no surviving husband or wife, then for the use of the minor children, out of the common property, or, if there be no common property, then out of the real estate belonging to the decedent. C. C. P., sec. 1465. Under these provisions no evidence whatever is necessary preceding the order. A general order "that all property exempt from execution be set aside as provided in section 1465 of the Code of Civil Procedure" is all that is necessary. Id., sec. 1704. Such order carries the homestead and all other exempt property. When the order is made the question as to what property is exempt must be determined when the question of exemption is in issue in the same or some other proceeding. As to the second paragraph. If no homestead has been selected then the Court's order and selection carves one out; but if notwithstanding the order *one has been selected*, and not abandoned, the Court's order gives none. It serves only to demonstrate that the Court was mistaken. A new homestead cannot be acquired until the old one [if any] is abandoned.

NOTE 2.—In Nevada the same to this extent: Upon the return of the inventory, or at any subsequent time during the administration, the Court or Probate Judge may, of his own motion, or on application, set apart for the use of the family of the deceased, all personal property which is by law exempt from execution, and the homestead as designated by the general homestead and other law. Rev. Stats., sec. 2790.

NOTE 3.—In Idaho the same as in Nevada, and in addition the following: If none has been selected, designated and recorded, the Judge of the Court must select, designate, set apart, and cause to be recorded a homestead for the use of the persons hereinbefore named, in the manner provided by law, out of the real estate belonging to the decedent. Rev. Stats., sec. 5441.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2581.

NOTE 5.—In Utah the same as in California, down to and including words "all the property exempt from execution." Comp. Laws, sec. 4114.

NOTE 6.—In North and South Dakota the same as in California, as to setting aside all personal property exempt from execution; then, "If no homestead has been selected, marked out, platted and recorded, as provided by the homestead law, the Judge of the Probate Court must cause the same to be done according to the provisions of said law." Comp. Laws, secs. 5779-5790.

Now under the homestead law above referred to the owner of the premises or the



husband or wife may select the homestead and cause it to be marked out, platted, and recorded. *Id.*, secs. 2458-2459. But this must be done before the death of either: therefore secs. 5779-5790, *Id.*, is an exception, allowing *permission* to make the selection after the death of either spouse; therefore the Court's order is necessarily a *permission*, and it should read:

"It is ordered that A. B., the widow, etc., of C. B., deceased, be empowered to select, etc., the following described land [description] as a homestead and to do all necessary things to secure said land as a homestead under the provisions of Chapter XIII of the Political Code, and Chapter VI of the Probate Code of the State of North [or South] Dakota."

Signed, etc.

NOTE 7.—In Wyoming the same as in California. *Stats.* 1890-91, sec. 4, p. 267.

NOTE 8.—In Washington, upon the death of a person, the widow and children may remain in possession of the homestead and all the apparel and household furniture of the deceased; and, if the head of the family had not complied with the provisions of the law relative to the acquisition of a homestead, the widow, or the child or children, may comply with such provisions, and shall be entitled, on such compliance, to a homestead, as now provided by law for the head of a family, and the same shall be set aside for the use of the widow, child, or children, and shall be exempt from all claims for the payment of any debt, whether individual or community. Said homestead shall be for the use and support of said widow, child, or children, and shall not be assets in the hands of any administrator or executor for the debts of the deceased, whether individual or community; and in addition all the property of the estate exempt from execution is also set aside for their benefit. *Hill's Stats.*, sec. 972, 973.

NOTE 9.—In Oregon the widow is entitled to dower in lands instead of a homestead, and therefore when the inventory is filed the Court, or Judge, makes an order setting apart for the widow or minor children all the property of the estate exempt from execution. The property thus set apart, if there be a widow, is her property, to be used or expended by her in the maintenance of herself and minor children, if any, or, if there be no widow, it is the property of the minor child; or, if more than one, of the minor children, in equal shares, to be used or expended in the nurture and education of such child or children, by the guardian thereof, as the law directs. *Hill's Laws*, sec. 1127, p. 722.

NOTE 10.—In Arizona the same as in Idaho. *Rev. Stats.*, sec. 1094.

NOTE 11.—In Colorado every head of a family and a householder is entitled to a homestead not exceeding \$2,000 in value. *Mill's Stats.*, sec. 2132.

It is only exempt as long as the owner occupies it. *Id.*, sec. 2134.

If a decedent leaves a husband, widow, or children it goes to them. If none, then to the estate. *Id.*, sec. 2135.

All personal property exempt from forced sale descends to the family, but the widow may accept its value in money from the estate. *Id.*, secs. 1534, 1535.

## No. 1022.—Decree Showing Notice to Creditors.

[TITLE OF COURT AND ESTATE.]

It appearing to the satisfaction of this Court that due and legal notice to the creditors of said estate has been given:

It is hereby ordered, adjudged, and decreed, that legal notice to the creditors of said *Thomas Jones*, deceased, has been given; that the same is established of record, and that this decree be entered in the minutes of this Court, and recorded.

NOTE 1.—In California, after publication of notice to creditors is given, as required by law, a copy thereof, with the affidavit of publication, or of publication and posting, must be filed, and, upon such affidavit or other testimony to the satisfaction of the Court, an order or decree showing that due notice to creditors has been given, and directing that such order or decree be entered in the minutes and recorded, must be made by the Court. *C. C. P.*, sec. 1492.

NOTE 2.—In Nevada the same. *Stats.* 1891, sec. 2, p. 105, amending *Gen. Stats.*, sec. 2798.

NOTE 3.—In Idaho the same. *Rev. Stats.*, sec. 5462.

NOTE 4.—In Montana the same. *C. C. P.*, sec. 2502.

NOTE 5.—In Utah the same, except the decree must be made within thirty days after the "notice is given." *Comp. Laws*, sec. 4122.

NOTE 6.—In North and South Dakota the same as in California. *Comp. Laws*, sec. 5789.

NOTE 7.—In Wyoming the same as in California, except no decree is made or entered. *Stats.*, 1890-91, sec. 2, p. 270.

NOTE 8.—In Washington the same as in Wyoming, except a copy of the notice and affidavit of publication must be filed. *Hill's Stats.*, sec. 975.

NOTE 9.—In Oregon the same as in Utah, but without the six months in which claims must be presented. *Hill's Laws*, secs. 1131, 1132, p. 724.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1109.

NOTE 11.—In Colorado the administrator or executor fixes the day at a term of the County Court within six months of his justification for the settlement of claims, and he gives four weeks' notice by publication the same as in California. No decree is necessary. See Creditor's Claims, note 11. Mills Stats., secs. 4781, 4782.

### No. 1023.—Decree of Settlement of Account, etc.

[TITLE OF COURT AND ESTATE.]

*Mary Jones, the administratrix of the estate of Thomas Jones, deceased, having, on the sixteenth day of June, 1895, rendered and presented for settlement and filed in this Court, her annual account of her administration of said estate, and afterwards, to wit, on the eleventh day of July, 1895, the said matter coming on regularly to be heard, and proof having been made to the satisfaction of this Court that notice of the settlement of said account and of the time and place of hearing the same had been duly given by the Clerk as required by law and the order of this Court. Now, on this the day last aforesaid, being a day of the July term, 1895, of this Court, the referee, George B. Merrill, Esq., having returned and filed his report, and no exceptions having been made or filed, and it duly appearing to this Court that the said referee has fully examined the said account and the vouchers produced in support thereof, and that no person appeared to contest the same, and that no exceptions or objections were filed or made before said referee to said account, or any part thereof; that said account contains a just and full account of all the moneys received and disbursed by said administratrix, from the commencement of her administration of said estate to the sixteenth day of June, 1895; that all necessary and proper vouchers were produced and duly filed herein;*

*That the total amount received by said administratrix,*

as such, is.....\$7,165 00

And the full amount expended..... 1,369 50

Leaving a balance.....\$5,795 50

And that said account is entitled to be allowed and approved; and the Court having duly considered *said report and the matters aforesaid:*

It is ordered and decreed, that the said account be, and the same hereby is, in all respects as the same was rendered and presented for settlement, approved, allowed, and settled.

Done in open Court.

NOTE 1.—In California the accounts of administrators and executors are never allowed until it is proved that notice of the time and place of hearing and settlement of the account has been given as required by law, and the decree settling the account must show that such proof was made to the satisfaction of the Court, and the decree is conclusive evidence of the fact. [That notice was given.] C. C. P., sec. 1633.

NOTE 2.—In Nevada the same. Gen. Stats., secs. 2907.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5603.

NOTE 4.—In Montana the same. C. C. P., secs. 2810-2820.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4242.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5905.



NOTE 7.—In Wyoming there are no similar provisions, except the allowance of an account is conclusive in all cases. Stats. 1890, sec. 20, p. 290.

NOTE 8.—In Washington the same as in California. Hills' Stats., sec. 1074.

NOTE 9.—In Oregon it is only necessary to file proof of publication of the notice with the Clerk of the Court. Hill's Laws, sec. 1182, p. 740.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1229.

NOTE 11.—In Colorado not applicable.

## No. 1024.—Decree of Settlement of Accounts and Distribution.

[TITLE OF COURT AND ESTATE.]

*Robert Day, executor of the last will of Wm. H. Ladd, deceased, having on the sixteenth day of June, 1895, rendered and filed herein a full account and report of his administration of said estate, which account was for a final settlement, and having with said account filed a petition for the final distribution of the estate;*

And said account and petition this day coming on regularly to be heard, proof having been made to the satisfaction of the Court that the Clerk had given notice of the settlement of said account, and the hearing of said petition, in the manner and for the time heretofore ordered and directed by the Court;

And it appearing that said account is in all respects true and correct, and that it is supported by proper vouchers; that the residue of money in the hands of the *executor*, at the time of filing said account, was *one thousand* dollars; that since the rendition of said account there has been received by the said *executor* the sum of *five hundred* dollars; that the sum of *five hundred* dollars has been expended by him as necessary expenses of administration, the vouchers whereof, together with a statement of such *expenses and disbursements*, are now presented and filed, and said statement is now settled and allowed, and the payments are approved by this Court; that the estimated expenses of closing the estate will amount to *one hundred* dollars, leaving a residue of *nine hundred* dollars; and it appearing that all claims and debts against said decedent, all taxes on said estate, and all debts, expenses, and charges of administration have been fully paid and discharged, and that said estate is ready for distribution, and in condition to be closed:

It is further ordered, adjudged, and decreed, that the said final accounts of the said *executor* be, and the same are, settled, allowed, and approved, and that the residue of said estate herein-after particularly described, and any other property not now known or discovered, which may belong to the said estate, or in which the said estate may have any interest, be, and the same is hereby, distributed as follows:

*All of said property to be distributed to his widow, Helen Ladd.*

The following is a particular description of the said residue of said estate referred to in this decree, and of which distribution is now ordered as aforesaid:



*Eight hundred dollars in gold coin of the United States, cash in the hands of said executor.*  
(Done in open Court.)

NOTE 1.—In California, when any account is rendered for settlement, the Court appoints a day for the settlement thereof; the Clerk thereupon gives notice by posting in at least three public places in the county, setting forth the name of the estate, the executor or administrator, and the day appointed for the settlement. The Court may order such further notice to be given. If the account is a final settlement, and a petition for the final distribution of the estate is filed with said accounts, the notice must state those facts, and the notice must be given by posting or publication, as the Court may direct, and for such time as may be ordered. On the settlement of said account distribution and partition of the estate to all entitled thereto may be immediately had without further notice or proceedings. C. C. P., secs. 1633, 1634.

NOTE 2.—In Nevada, Wyoming, Washington, Oregon, and Colorado, the above form is not applicable, because there are no statutory provisions authorizing such final settlement at the time contemplated by section 1634 of the California C. C. P. referred to in note 1; but section 1633, Id., is applicable, as will be seen by the notes to the form of notice given when accounts are rendered for settlement.

NOTE 3.—In Idaho the same as in California, except the Court fixes the time for the hearing and the number of days' notice to be given. Rev. Stats., secs. 5598, 5599.

NOTE 4.—In Montana the same as in California. C. C. P., secs. 1791, 1792.

NOTE 5.—In Utah the same as in Montana. Comp. Laws, secs. 4237, 4238.

NOTE 6.—In North and South Dakota the same as in Montana. Comp. Laws, secs. 5900, 5901.

NOTE 7.—In Arizona the same as in Idaho. Rev. Stats., secs. 1224, 1225.

## No. 1025.—Decree of Distribution.

[TITLE OF COURT AND ESTATE.]

*Mary Jones, the administratrix of the estate of Thomas Jones, deceased, having on the seventeenth of August, 1895, filed in this Court her petition, praying for an order finally distributing said estate; said matter coming on regularly to be heard this nineteenth day of September, 1895, the hearing of said petition was by the order of this Court, duly made and entered, continued until this twenty-sixth day of September, 1895, at eleven o'clock A. M., and at the said last-mentioned time the said administratrix appearing by her counsel, and the attorney heretofore appointed for the minor heirs of said deceased, being present in Court and representing such minor heirs, this Court proceeded to the hearing of said petition; and it appearing to the satisfaction of this Court that the residue of said estate, consisting of the property hereinafter particularly described, is now ready for distribution, and that said estate is now in a condition to be closed:*

*That the whole of said estate is common property, it having been acquired by said deceased after his marriage to said Mary Jones.*

*That the said Thomas Jones died intestate, in the City and County of San Francisco, on the seventeenth day of May, 1895, leaving him surviving said Mary Jones, his widow, and James Jones, William Jones, a minor, Charlotte Jones, a minor, and Emma Jones, a minor, the children of said deceased, and his only descendants.*

*That since the rendition of her said final account the sum of fifty dollars has come into the hands of said administratrix, and the sum of twenty dollars and sixty-two cents has been expended by said administratrix as necessary expenses of administration,*

the vouchers whereof, together with a statement of such receipts and disbursements, are now presented and filed, and the payments are approved by this Court; and that the estimated expenses of closing said estate will amount to the sum of *twenty-five* dollars.

That the said *Mary Jones*, the surviving widow of said deceased, is entitled to the *one-half* the residue of said estate, and the said descendants of said deceased are entitled to the other half of the said residue of said estate.

Now, on this, the said *twenty-sixth* day of *September*, 1895, on motion of *Robert Harrison*, Esq., counsel for said administratrix, the said attorney for the minor heirs of said deceased consenting:

It is hereby ordered, adjudged and decreed, that the residue of said estate of *Thomas Jones*, deceased, hereinafter particularly described, and now remaining in the hands of said administratrix, and any other property not now known or discovered, which may belong to the said estate, or in which the said estate may have any interest, be, and the same is hereby, distributed as follows, to wit:

*The one-half* of said residue to the said *Mary Jones*, the widow of said deceased, and the other half of said residue to said *James Jones*, *William Jones*, *Charlotte Jones*, and *Emma Jones*, the descendants of said deceased; that is to say, that the sum of \$662.52 be paid to said *Mary Jones*, and the sum of \$165.62 be paid to said *James Jones*, and the like sum to the legally appointed guardian of each of the said minors, *William Jones*, *Charlotte Jones*, and *Emma Jones*; and the one equal undivided half part of the real estate is hereby distributed to said *Mary Jones*, and the other equal undivided half part of the real estate to the said descendants of said deceased; to the said *James Jones*, one undivided one-eighth; to the said *William Jones*, one undivided one-eighth; to the said *Charlotte Jones*, one undivided one-eighth; and to the said *Emma Jones*, one undivided one-eighth of the whole of the real estate hereinafter mentioned and described.

The following is a particular description of the said residue of said estate referred to in this decree, and of which distribution is ordered, adjudged, and decreed, as aforesaid, to wit:

*Personal Property:*

Cash .....\$1,325 00

*Real property:*

[DESCRIPTION.]

Done in open Court, etc.

NOTE 1.—In California upon the final settlement of the accounts, or at any subsequent time, upon the application of any interested persons, the Court proceeds to distribute the residue of the estate among the persons entitled thereto; [and, if the decedent left a surviving child, and the issue of other children, and any of them, before the close of the administration, have died while under age and not having been married, all the estate which such deceased child was entitled to by inheritance must, without administration, be distributed to the other heirs at law.] A statement of any receipts and disbursements, since the rendition of his final accounts, must be reported and filed at the time of making such distribution, and a settlement thereof, together with an estimate of the expenses of closing the estate, must be made by the Court and included



in the order or decree; or the Court or Judge may order notice of the settlement of such supplementary account, and refer the same as in other cases of the settlement of accounts. C. C. P., sec. 1665.

[See also the form following.]

NOTE 2.—In Nevada all that part in brackets is omitted. Gen. Stats., sec. 2926.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 5626.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2843.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 4261.

NOTE 6.—In North and South Dakota the same as in California. Comp. Laws, sec. 5924.

NOTE 7.—In Wyoming, at any time after one year from the appointment of the executor or administrator, if it appears that due notice has been given and that the estate is fully administered, and that the accounts have been finally settled, the Court proceeds the same as in California to distribute remainder of the estate. Then follow the same provisions as in California when the deceased left a [surviving] child, etc., and all after the words "heirs at law" in the seventh line of Note 1 are omitted. Stats. 1890-91, sec. 5, p. 293.

NOTE 8.—In Washington, upon the settlement of the accounts, or at any subsequent time, upon the application of the executor or administrator, or any heir, devisee, or legatee, the Court shall proceed to distribute the residue of the estate among the persons who are by law entitled. Hill's Stats., sec. 1094.

NOTE 9.—In Oregon the same as in Washington. Hill's Laws, sec. 1191.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1248.

NOTE 11.—In Colorado the same as in Oregon. Mill's Stats., secs. 4797, 4798.

## No. 1026.—Decree of Distribution on Settlement of Accounts.

[TITLE OF COURT AND ESTATE.]

*Mary Jones, the administratrix of the estate of Thomas Jones, deceased, having on the seventeenth of August, 1895, filed in this Court her petition, setting forth, among other matters, that her accounts have been finally settled and said estate is in a condition to be closed; and that a portion of said estate remains to be divided among the heirs of said deceased; said matter coming on regularly to be heard this nineteenth day of September, 1895, the hearing of said petition was, by the order of this Court, duly made and entered, continued until this twenty-sixth day of September, 1895, at eleven o'clock A. M.; and at the said last-mentioned time, the said administratrix appearing by her counsel, and Frank J. French, Esq., the attorney heretofore appointed for the minor heirs of said deceased, being present in Court and representing such minor heirs, this Court proceeded to the hearing of said petition; and it appearing to the satisfaction of this Court that the residue of said estate, consisting of the property hereinafter particularly described, is now ready for distribution, and that said estate is now in a condition to be closed:*

*That the whole of said estate is common property, it having been acquired by said deceased after his marriage to said Mary Jones.*

The following is a particular description of the said residue of said estate referred to in this decree, and of which distribution is ordered, adjudged, and decreed, as aforesaid, to wit:

### Personal Property:

Cash.....\$1,325 00

### Real Property:

[Description.]

(Done in open Court.)



NOTE 1.—In California, in the order or decree of distribution, the Court names the persons and the proportions or parts to which each is entitled, and such persons may recover their shares from the executor or administrator, or any person having the same in possession. Such order or decree is conclusive as to the rights of heirs, legatees, or devisees, subject only to be reversed, set aside, or modified on appeal. C. C. P., sec. 1666. [See also preceding form.]

NOTE 2.—In Nevada the same as in California; but the paragraph commencing with the word "Such" is excluded. Gen. Stats., sec. 2928.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 5627.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2844.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 4262.

NOTE 6.—In North and South Dakota the same as in California. Comp. Laws, sec. 5925.

NOTE 7.—In Wyoming the same as in Nevada. Stats. 1890-91, p. 294, sec. 6.

NOTE 8.—In Washington the same as in Nevada. Hill's Stats., sec. 1095.

NOTE 9.—In Oregon the law governing estates is remarkably brief. A few general directions are given, and the details of administration left to the Courts. When the debts are paid the Court is directed to order the payment of legacies and the distribution of the remaining proceeds of the personal property among the heirs or other persons entitled thereto. Hill's Laws, sec. 1191, p. 743.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1249.

NOTE 11.—In Colorado the same as in Oregon. Mills' Stats., secs. 4797, 4798. [See Final Discharge.]

## No. 1027.—Decree of Final Discharge.

[TITLE OF COURT AND ESTATE.]

It appearing that said estate has been fully administered, and it being shown by the *administratrix thereof*, by the production of satisfactory vouchers, that said *administratrix* has paid all sums of money due from *her*, and delivered up under the order of the Court all the property of the estate to the parties entitled, and performed all acts lawfully required of *her*:

It is ordered, adjudged, and decreed, that said *administratrix* and *her* sureties be, and they are hereby, released and discharged from all liability to be *hereafter incurred*;\* that the said estate is fully distributed, and the trust settled and closed.

NOTE 1.—In California, when the estate has been fully administered, and it is shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up, under the order of the Court, all the property of the estate to the parties entitled, and performed all the acts lawfully required of him, the Court must make a judgment or decree discharging him from all liability to be incurred thereafter. C. C. P., sec. 1697.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2948.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5649.

NOTE 4.—In Montana the same. C. C. P., sec. 2886.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4284.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5947.

NOTE 7.—In Wyoming. Stats. 1890-91, sec. 8, p. 294.

NOTE 8.—In Washington. Hill's Stats., sec. 1115.

NOTE 9.—In Oregon, when the order of distribution is made and obeyed, the estate is considered closed without an order of Court. Hill's Laws, sec. 119., p. 743.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1276.

NOTE 11.—In Colorado the same in meaning as in California, and "but no discharge shall in any manner affect the right of any creditor, heir, or devisee, to bring an action on the bond of such administrator or executor for any breach of the condition of his bond." Mills' Stats., sec. 4803, 4804. This is really the same as in California, because the discharge there and in all the other States is from "liability to be incurred" after the discharge.

\* The profession will take notice that the statute discharging an officer from a liability to be incurred thereafter is in the nature of an "indulgence" for a wrong to be committed. The form No. 1027 is up to date in this matter. A singular provision is found in section 1245 of the California Street Assessment Law, enacting that "The City Council may in its discretion but not otherwise, order an assessment. Stats. 1889, p. 169.

## No. 1028.—Exhibit Six Months after Appointment.

[TITLE OF COURT AND ESTATE.]

To the Hon. the said Superior Court of the *City and County of San Francisco, State of California.*

I, *Mary Jones, the administratrix of the estate of Thomas Jones, deceased,* do hereby make and render this my account and exhibit of said estate:

## I. MONEY RECEIVED AS FOLLOWS:

Cash on hand at time of death of Deceased.....	\$ 50 00
Net Proceeds of Sales of Personal Property .....	4,118 50
	<hr/> \$4,168 50

## MONEY EXPENDED AS FOLLOWS:

Fees of Clerk of Superior Court.....	\$ 16 50
Fees of Appraisers of Estate.....	30 50
Fees of Attorney for Administratrix.....	100 00
Publication of Notice to Creditors.....	5 00
Publication of Notice of Application for Order of Sale of Personal Property.....	5 00
Notary Fees, Affidavits to Return of Sale of Per- sonal Property.....	1 50
Allowance to Family of Deceased.....	300 00
	<hr/> 458 50

Balance in hands of administratrix....	\$3,710 00
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## II. CLAIMS AGAINST THE ESTATE.

Names of Claimants.	Nature of Claims.	Remarks.	Amount of Claims.
John Smith.....	{ Promissory Note, Money Loaned, and Horse Sold. }	Allowed.	\$1,500 00
George Taylor.....	{ Funeral Ex- penses. }	Allowed.	200 00
Dr. C. G. Bryant.....	{ Expenses of Last Sickness. }	Allowed.	250 00
Alfred Pope.....	{ Balance of Ac- count. }	Allowed.	500 00
Amount of Claims.....			<hr/> \$2,450

## III. AFFAIRS OF SAID ESTATE.

The debts of said estate amounting to the sum of \$2,450, the allowance of the family before said estate can be closed, to the sum of \$830, in addition to what has been already paid, and the estimated expenses of administration before said administration can be closed,

to the sum of \$195.48, making in all the sum of \$4,475.48, and mon-  
 eys in the hands of the administratrix amounting to the sum of \$3,710  
 only, there is a deficiency of \$765.48, which renders necessary a sale  
 of some real estate, an application for which purpose is about to be  
 made to this Court.

(Signed by Administratrix.)

See Accounts.

NOTE 1.—In California the executor or administrator, six months after his appoint-  
 ment and at any other time when required by the Court, must render an exhibit under  
 oath, showing the amount of money received and expended by him, the amount of  
 claims presented, and the names of the claimants, and all other matters necessary to  
 show the condition of the estate's affairs. C. C. P., sec. 1622.

Another account is also required within thirty days after the expiration of the  
 time for the presentation of claims. The executor or administrator must render a full  
 account and report of his administration. If he fails, the Court must compel him to  
 by attachment, and any person interested may apply for and obtain an attachment;  
 but no attachment must issue unless a citation has been first issued, served, and  
 returned, requiring him to appear and show cause why an attachment should not issue.  
 Every account must exhibit all debts which have been presented and allowed during  
 the period embraced in the account. Id., sec. 1623.

The same form may be used for both accounts. The material difference is that the  
 first account need only show the amount of money received and expended, the amount  
 of claims presented and the names of the claimants.

Whereas the second account must show all debts *presented and allowed* between the  
 two accounts.

NOTE 2.—In Nevada the same as in California as to the first account, except it must  
 be presented at the third term of the Court after his appointment. Gen. Stats., sec.  
 2897. All executors and administrators, trustees, and guardians, or managers of estates  
 must *every three months* make the account contain all receipts and disbursements up  
 to date. If he fails in this he may be jailed for six months and fined not over \$500.  
 Stats. 1893, p. 105.

The second account must be rendered upon the expiration of one year after his  
 appointment. It differs from California in the fact that the statement of the debts  
 paid must be included. In all other respects the same. Id., sec. 2897.

NOTE 3.—In Idaho, as to the first account, the same as in Nevada. Rev. Stats., sec.  
 5587. As to the second, the same as in the California second. Id., 5593.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2786.

NOTE 5.—In Utah the same as in California. Comp. Laws, secs. 4226-4232. See also  
 Laws 1894, pp. 16, 17.

NOTE 6.—In North and South Dakota the same as in California, except the first  
 account must be rendered at the third term of the Court after his appointment, and the  
 second one year after. Comp. Laws, secs. 5889, 5898.

NOTE 7.—In Wyoming the same as in California, "To render a full account." Stats.  
 1890-91, sec. 81, p. 229.

NOTE 8.—In Washington the first account the same as in California, and the second  
 the same as in Wyoming. Hill's Stats., secs. 1057-1063.

NOTE 9.—In Oregon the account need only be filed at the close of administration,  
 although the Court may under its general powers order it to be filed at any time. The  
 California form may be used, although the wording of the statute is not precisely the  
 same. Hill's Laws, sec. 1173, p. 736. The first account the same as in California. Id.,  
 sec. 1170.

NOTE 10.—In Arizona the same as in Nevada as to the first account, and the same as  
 in Wyoming as to the second. Rev. Stats., secs. 1213-1219. He must also make an  
 annual account under the statute of 1891, p. 44.

NOTE 11.—In Colorado the first account must be filed the same as in California, and  
 then every six months until the estate is closed. The account must set forth the  
 amount of money received to the date of the report, the sources from which received,  
 the several amounts paid out, to whom paid, date of payment, and all payments shall  
 be accompanied with proper vouchers. Mills' Stats., secs. 4794, 4795.

## No. 1029.—Inventory and Appraisement.

[TITLE OF COURT AND ESTATE.]

The following is a true inventory and appraisement of all the  
 estate of *Thomas Jones*, deceased, which has come into the pos-  
 session of the undersigned administratrix:



Moneys belonging to the said deceased, which have come into the hands of the administratrix..... \$50 00

## REAL ESTATE.

- A certain lot, piece, or parcel of land, situate, lying, and being in the City and County of San Francisco, State of California, and bounded and particularly described as follows, to wit: Commencing at the northeast corner of Washington and Mason streets, running thence easterly, along the northerly line of Washington street, twenty (20) feet; thence at right angles northerly eighty (80) feet; thence at right angles westerly twenty (20) feet to the easterly line of Mason street; and thence southerly along said easterly line of Mason street, eighty (80) feet, to the point of commencement. And the improvements thereon, appraised at the sum of..... \$3,000 00
- A certain other lot, piece, or parcel of land, situate, lying, and being in said City and County, and known on the official map of said City as fifty-vara lot number six hundred and ninety (690), appraised at the sum of.. 6,000 00

## PERSONAL ESTATE.

## Household Furniture:

1 Parlor Stove, appraised at the sum of.....	20 00
1 Cooking Stove, " " " .....	20 00
1 Large Mirror, " " " .....	15 00
2 Small Mirrors, " " " .....	10 00
5 Carpets, " " " .....	75 00
4 Bedsteads, Beds, and Bedding, " " " .....	80 00
12 Chairs, " " " .....	24 00
3 Tables, " " " .....	15 00
1 Desk, " " " .....	16 00
1 Sofa, " " " .....	12 00
1 Gold Watch and Chain, appraised at the sum of...	100 00
25 Shares of the Zenith Gold and Silver Mining Company, appraised at \$100 per share.....	2,500 00
100 Shares of the Cornucopia Copper Mining Company, appraised at \$10 per share.....	1,000 00
50 Shares of the Nellie and Julia Mining Company, appraised at \$20 per share.....	1,000 00
5 Shares of the Smoky Valley Mining Company, appraised at \$50 per share.....	250 00

Appraised value of whole estate.....\$14,137 00

The whole of the estate mentioned in the foregoing inventory is community property, as far as can be ascertained from said administratrix.

We, the undersigned, duly appointed appraisers of the estate of

*Thomas Jones*, deceased, hereby certify that the property mentioned in the foregoing inventory has been exhibited to us, and that we appraise the same at the sum of *fourteen thousand one hundred and thirty-seven dollars (\$14,137)*.

(Signed by.)

*F. E. W.*, Appraisers.

See Nos. 1030, 1031, 1032, 1033, 1034, 1035.

NOTE 1.—In California the executor or administrator must make and return to the Court, within three months after his appointment, a true inventory and appraisement of all the estate of the decedent, including the homestead, if any, which has come to his possession or knowledge. C. C. P., sec. 1443. [It was evidently the intention of the statute that the executors, having a presumed knowledge of his, decedent's, affairs, should place values upon the property he describes in his inventory, the same as in Colorado, but the practice is to leave the values out to be added by the appraisers.]

See notes to "Inventory and Appraisement," for particular duty of appraisers.

NOTE 2.—In Nevada the same at the first term after appointment. Gen. Stats., sec. 2774.

NOTE 3.—In Idaho the same as in Nevada. Rev. Stats., sec. 5420.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2550.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 4098.

NOTE 6.—In North and South Dakota the same as in Nevada. Comp. Laws, sec. 5763.

NOTE 7.—In Wyoming the same as in California, within two months. Stats., 1890-91, sec. 1, p. 263.

NOTE 8.—In Washington the same as in California, within one month. Hill's Stats., sec. 957.

NOTE 9.—In Oregon the same as in Washington, but the Court may allow further time [and so it may in all places]. Hill's Laws, sec. 1112, p. 718.

NOTE 10.—In Arizona the same as in Nevada. Rev. Stats., sec. 1078.

NOTE 11.—In Colorado the executor or administrator must, within one month of his appointment, make out an inventory of all his, decedent's, estate of every description. Also the amounts and values must be stated. The debts due him must be stated particularly, and it must be stated whether each debt is "separate, doubtful, or desperate." When the appraisers are appointed they must take the inventory and set down each article with the value thereof in dollars and cents, as follows: All the valuations shall be set down on the right-hand side of the paper, in one or more columns, in figures, opposite to their respective articles of property, and the contents of each column shall be cast up and set at the foot of each respectively. It shall be certified by them under seal, with a certificate of the oath (or affirmation) taken by them, annexed. Mills' Laws, secs. 4729, 4731. The form above given is in accord with the Colorado law.

## No. 1030.—Inventory and Appraisement—Money Only.

[TITLE OF COURT AND ESTATE.]

The following is a true inventory of all the estate of *Henry Brown*, deceased, which has come into the possession of the undersigned executor, viz: *One thousand dollars* in gold coin of the United States, *one hundred and seven dollars* in silver coin of the United States, *ten dollars* in United States legal tender notes.

Total value of \$1,107.00.

(Signed by the executor.)

NOTE 1.—In California the inventory must also contain an account of all moneys belonging to the decedent which have come to the hands of the executor or administrator, and if none, the fact must be so stated in the inventory. [If the whole estate consists of money there need not be an appraisement, but an inventory must be made and returned as in other cases.] C. C. P., sec. 1446.

NOTE 2.—In Nevada the same, except the part in brackets. Gen. Stats., sec. 1447.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 5423.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2553.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4101.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5763.

NOTE 7.—In Wyoming the same as in Colorado. See note 11 to the form No. 1039. Stats. 1890-91, sec. 3, p. 263.

NOTE 8.—In Washington the same as in Nevada. Hill's Stats., sec. 960.

NOTE 9.—In Oregon the same as in Nevada. Hill's Laws, secs. 1111, 1113, p. 713.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1081.

NOTE 11.—In Colorado. See note 11 to Form No. 1039, "Inventory and Appraisement."

## No. 1031.—Inventory and Appraisement.—Property Discovered After the First Inventory.

[TITLE OF COURT AND ESTATE.]

The following is a true inventory and appraisement of all the property of Henry Brown, deceased, which has been discovered by the undersigned executor and which has come into the possession and knowledge of the undersigned since the date of the filing of the inventory and appraisement now on file in the said estate. Viz: [Description of the property if land or personal property other than money, and stating the amount if money precisely as in the first inventory.]

Signed, *etc.*

NOTE 1.—In California, whenever property not mentioned in an inventory filed comes to the possession or knowledge of an executor or administrator, he must cause the same to be appraised in the manner prescribed, and an inventory returned within two months after the discovery; and the making of such inventory may be enforced, after notice, by attachment or removal from office. C. C. P., sec. 1451.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2782.

NOTE 3.—In Idaho the same, except if the property is worth only two hundred and fifty dollars, or less, it need not be appraised. Rev. Stats., sec. 5428.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2558.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 4106.

NOTE 6.—In North and South Dakota the same as in California. Comp Laws, sec. 5771.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 3, p. 264.

NOTE 8.—In Washington the same as in California as soon as practicable after the discovery. Hill's Stats., sec. 965.

NOTE 9.—In Oregon the same as in Washington [as soon as may be]. Hill's Laws, sec. 1119, p. 720.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1086.

NOTE 11.—In Colorado, see Note 11 to Form No. 1039, "Inventory and Appraisement."

## No. 1032.—Inventory and Appraisement—Oath of Administrator.

[TITLE OF COURT AND ESTATE.]

STATE OF *California.* }  
City and County of *San Francisco.* } ss.

*Mary Jones*, the *administratrix* of the estate of *Thomas Jones*, deceased, being duly sworn, says that the annexed inventory contains a true statement of all the estate of the said deceased which has come to the knowledge and possession of said *administratrix*, and particularly of all moneys belonging to the said deceased, and of all just claims of the said deceased against the said *administratrix*.

(Subscribed and sworn to.)



NOTE 1.—In California the inventory must be signed by the appraisers, and the executor or administrator must take and subscribe an oath before an officer authorized to administer oaths, that the inventory contains a true statement of all the estate of the decedent which has come to his knowledge and possession, and particularly of all money belonging to the decedent, and of all just claims of the decedent against the affiant. The oath must be *indorsed* upon or *annexed* to the inventory. C. C. P., sec. 1449.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2780.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5426.

NOTE 4.—In Montana the same. C. C. P., sec. 2556.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4104.

NOTE 6.—In North and South Dakota the same. Comp. Laws, 5771.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 6, p. 264.

NOTE 8.—In Washington the same, but need not be indorsed on inventory. Hill's Stats., sec. 967.

NOTE 9.—In Oregon same as in Washington, and verified in the usual manner, viz: That it [the inventory] is true. Hill's Laws, sec. 1112, p. 718.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1084.

NOTE 11.—In Colorado. See note 11 to Form No. 1039, "Inventory and Appraisement."

### No. 1033.—Inventory and Appraisement—Special.

[TITLE OF COURT AND ESTATE.]

The undersigned appointed to make a special appraisement of the interest of said estate in the partnership formerly existing between said deceased and *John Jones*, in the wholesale grocery store, No. 12763 Market Street, San Francisco [*and so as to any other property*], report that we have performed that duty, and we value said at *nine thousand two hundred* dollars. We also recommend that said interest be sold as soon as practicable.

See Nos. 1030-1032, 1034.

### No. 1034.—Inventory and Appraisement—Oath of Appraisers.

[TITLE OF COURT AND ESTATE.]

STATE OF *California*, }  
City and County of *San Francisco*. } ss.

*F. Holmes, E. Bigelow, and W. L. Crowell*, duly appointed appraisers of the estate of *Thomas Jones*, deceased, being duly sworn, each for himself says, that he will truly, honestly, and impartially appraise the property of said estate which shall be exhibited to him, according to the best of his knowledge and ability.

(Subscribed and sworn to.)

NOTE 1.—In California, to make the appraisement, the Court, or, a Judge thereof, must appoint three disinterested persons (any two of whom may act), who are entitled to receive a reasonable compensation for their services, not to exceed five dollars per day, to be allowed by the Court or Judge. The appraisers must, with the inventory, file a verified account of their services and disbursements. C. C. P., sec. 1444.

Before proceeding the appraisers must subscribe an oath, to be attached to the inventory, that they will truly, honestly, and impartially appraise the property exhibited to them according to the best of their knowledge and ability. They must then proceed to estimate and appraise the property; each article must be set down separately, with the value thereof in dollars and cents, in figures, opposite to the articles respectively; the inventory must contain all of the estate of decedent, real and personal, a statement of all debts, partnerships, and other interests, bonds, mortgages, notes, and other securities for the payment of money belonging to the decedent, specifying the name of the debtor in each security, the date, the sum originally payable, the indorsements thereon (if any), with their dates, and the sum which, in the judg-

ment of the appraisers, may be collected on each debt, interest, or security [the inventory must show, so far as the same can be ascertained by the executor or the administrator, what portion of the property is community property, and what portion is the separate property of the decedent]. *Id.*, sec. 1445.

NOTE 2.—In Nevada the same, except, if only one day's services are charged, the account need not be verified, except, of course, the account of disbursements should be verified. *Gen. Stats.*, secs. 2775, 2776.

NOTE 3.—In Idaho the same as in California, at four dollars a day. *Rev. Stats.*, secs. 5421, 5422.

NOTE 4.—In Montana the same as in California. *C. C. P.*, secs. 2551, 2552.

NOTE 5.—In Utah the same as in California. *Comp. Laws*, secs. 4099, 4100.

NOTE 6.—In North and South Dakota the same as in California, at two dollars a day except that part in brackets is omitted. *Comp. Laws*, secs. 5764, 5765.

NOTE 7.—In Wyoming the same as in California, with the provision that money is not to be appraised. *Stats.* 1890-91, sec. 3, p. 263, and the compensation is three dollars a day. *Id.*, sec. 2.

NOTE 8.—In Washington. "The estate and effects comprised in the inventory shall be appraised by three suitable disinterested persons, who shall be appointed by the Court. Such appraisers shall receive, as compensation for their service, three dollars per day, to be paid out of the estate, and, when they have to go out of their county, mileage shall be allowed; *provided*, that where it appears to the satisfaction of the Court that the whole estate consists of personal property of less value than one hundred dollars, exclusive of moneys, drafts, checks, bonds, or other securities of fixed valuation, an appraisement may be dispensed with, in the discretion of the Court." *Hill's Stats.*, sec. 958. The second paragraph of the California law, with the part at the bottom in brackets omitted, viz: Sec. 1445, is the same as sec. 959 of Washington law. *Id.*, sec. 959.

NOTE 9.—In Oregon, before the inventory is filed, the property is appraised at its true cash value by three disinterested and competent persons, who shall be appointed by the Court, or Judge, but, if any part of the property shall be in a county other than that where the administration is granted, the appraisers thereof may be appointed by such Court or Judge, or the Court or Judge thereof of the county where the property shall be; in the latter case a certified copy of the order of appointment shall be filed with the inventory. *Hill's Laws*, sec. 1114.

Before making the appraisement the appraisers each subscribe an affidavit, filed with the inventory, to the effect that he will honestly and impartially appraise the property which shall be exhibited to him, according to the best of his knowledge and ability. *Id.*, sec. 1115, p. 719.

Each article is appraised separately and the value set down in dollars and cents opposite the entry of the article. Money, that is, legal tender, is appraised at its nominal value; but debts, of all descriptions or kinds, are appraised at that sum which, in the judgment of the appraisers, may be realized from them by due process of law. When the appraisement is completed the inventory shall be signed by the appraisers. *Id.*, sec. 1116.

It also contains a statement of all debts due the deceased, the written evidence thereof, and the security thereof, if any exists, specifying the name of each debtor, the date of each written evidence of debt, and security thereof, the sum originally payable, the indorsements thereon, if any, and their dates, and the sum appearing then to be due thereon. *Id.*, sec. 1113, p. 118.

NOTE 10.—In Arizona the same as in California, at three dollars a day. *Rev. Stats.*, secs. 1079, 1080.

NOTE 11.—In Colorado. See note 11 to No. 1029, "Inventory and Appraisement" as to the duty of appraisers; but, the statute prescribes a form of appointment.

[Title of Court and Estate.]

"This is to authorize you, jointly to appraise the goods of J. K., late of County of C., and State of Colorado, deceased, so far as the same shall come to your right and knowledge, each of you first having taken the oath (or affirmation) hereto annexed, a certificate whereof [of the affidavit] you are to return annexed to an appraisement bill of said goods, chattels, and personal estate, by you appraised, in dollars and cents; and in the said bill of appraisement you are to set down in a column or columns, opposite to each article appraised, the value thereof.

Witness, etc., and signed by Clerk with Court seal.

Session Laws 1891, p. 405.

## No. 1035.—Inventory and Appraisement—Bill and Verification by Appraisers.

[TITLE OF COURT AND ESTATE.]

To F. Holmes, E. Bigelow, and W. L. Crowell, Appraisers, Dr.

To compensation for services in appraising said estate, items as follows:

Two days' services, at \$5.00 day each .....	\$30 00
Necessary disbursements, as follows:	
Fare to lot No. 690 and return .....	50
	<hr/>
	\$30 50

STATE OF California, }  
 City and County of San Francisco. } ss.

*F. Holmes, E. Bigelow, and W. L. Crowell*, the appraisers above named, being duly sworn, each for himself says, that the foregoing bill of items is correct and just, and that the services have been duly rendered as therein set forth.

(Subscribed and sworn to.)

See No. 1029.

### No. 1036.—Justification of Sureties.

STATE OF California, }  
 City and County of San Francisco. } ss.

*John Brown and Samuel Jones*, the sureties named in the above bond, being duly sworn, each for himself, says that he is a *householder* and resident within said State, and is worth the said sum of *one thousand* dollars over and above all his debts and liabilities, exclusive of property exempt from execution.

(Subscribed and sworn to.)

NOTE 1.—California. C. C. P., sec. 1057. See No. 954, and notes. Same in Superior Court.

### No. 1037.—Letters Testamentary.

[TITLE OF COURT AND ESTATE.]

The last will of *Paul Clifford*, deceased, a copy of which is hereto annexed, having been proved and recorded in the Superior Court of the County of *Sacramento*, *Timothy Markham*, who is named therein, is hereby appointed executor, with *Gordon Bennett*.

Witness, *Thos. H. Berkey*, Clerk of the Superior Court of the County of *Sacramento*, with the seal of the Court affixed, the *fourth day of May, 1895*.

By order of the Court.

[SEAL.]

*THOS. H. BERKEY*, Clerk,

By *C. W. Coon*, Deputy Clerk.

STATE OF California, }  
 City and County of Sacramento. } ss.

I do solemnly swear that I will perform, according to law, the duties of executor of the last will and testament of *Paul Clifford*, deceased.

(Subscribed and sworn to.)

NOTE 1.—In California the above form down to and including the words "By order of the Court, G. H., Clerk," is a copy of sec. 1360, C. C. P. The words in *script* are not in the section, being blanks. The section commences by words "Letters testamentary must be substantially in the following form." The word *substantially* authorizes any form similar in meaning.



NOTE 2.—In Nevada the same *may be*. Gen. Stats., sec. 2717.

NOTE 3.—In Idaho the same *must be*. Gen. Stats., sec. 5343.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2420.

NOTE 5.—In Utah the same *must be*. Comp. Laws, sec. 4032.

NOTE 6.—In North and South Dakota the same *must be*. Comp. Laws, sec. 5702.

NOTE 7.—In Wyoming the same *must be* substantially. Stats. 1890-91, sec. 1, p. 253.

NOTE 8.—In Washington the statute says the letters *may be* in the following form:

[Title of Court and Estate.]

Letters testamentary to be issued to executors under the provisions of this act *may be* in the following form: "State of Washington, County of C. In the Superior Court of the County of C. Whereas, the last will of A. B., deceased, was, on the fifth day of May A. D. 1895, duly exhibited, proven, and recorded in our said Superior Court, a copy of which is hereto annexed; and whereas, it appears in and by said will that C. D. is appointed executor thereon,—now, therefore, know all men by these presents, that we do hereby authorize the said C. D. to execute said will according to law. Witness my hand and the seal of said Court this fifth day of May, A. D., 1895." Hill's Stats., sec. 898.

NOTE 9.—In Oregon letters testamentary *may be* in the following form: State of Oregon, county of C., ss. To all persons to whom these presents shall come, greeting: Know ye, that the will of B., deceased, a copy of which is hereto annexed, has been duly proven in the county court for the county aforesaid, and that W., who is named executor therein, has been duly appointed such executor by the Court aforesaid; this, therefore, authorizes the said W. to administer the estate of the said B., deceased, according to law. In testimony whereof, I, X., Clerk of the County Court, have hereunto subscribed my name and affixed the seal of said Court this fifth day of May, A. D. 1895. [L. S.] A. B., Clerk County Court." Hill's Laws, sec. 1109, p. 717.

NOTE 10.—In Arizona the same as in California. Rev. Stats., 1012.

NOTE 11.—In Colorado letters shall be as near as *may be* in the following form:

"STATE OF COLORADO,  
B. County } ss.

"The People of the State of Colorado, to all to whom these presents shall come, Greeting: "Know ye, that whereas A. B., late of the County of C., and State of Colorado, died on or about the fifth day of May, 1895, as it is said, after having duly made and published his last will and testament, a copy whereof is hereunto annexed, leaving, at the time of his death, property in this State, which may be lost, destroyed, or diminished in value, if speedy care be not taken of the same; and inasmuch as it appears that C. D. has been appointed executor, in and by the said last will and testament, to execute the same, and to the end that the said property may be preserved for those who shall appear to have legal right or interest therein, and that said will may be executed according to the request of the said testator, we do hereby authorize him, the said C. D., as such executor, to collect and secure, all and singular, the goods and chattels, rights and credits, which were of the said A. B. at the time of his decease, in whosever hands and possession the same may be found in this State, and well and truly to perform and fulfill all such duties as may be enjoined upon him by the said will, so far as there shall be property; and the law charges him, and in general, to do and perform all other acts which now are, or hereafter may be, required of him by law." Mills' Stats., sec. 4698.

The oath of the executor must be as follows:

"I do solemnly swear (or affirm) that I will well and truly administer all and singular, the goods and chattels, rights and credits, and effects of A. B., deceased, and pay all just claims and charges against his estate, so far as his goods, chattels, and effects shall extend, and the law charges me, and that I will do all other acts required of me by law, to the best of my knowledge and ability. So help me God." Id., sec. 4700.

## No. 1038.—Letters of Administration with Will Annexed.

[TITLE OF COURT AND ESTATE.]

STATE OF California, }  
County of Sacramento. } ss.

The last will of *Andrew Morgan*, deceased, a copy of which is hereto annexed, having been proved and recorded in the Superior Court of the *City and County of Sacramento*, and there being no executor named in the will, *residing in this State*, *Wm. Perry* is hereby appointed administrator with the will annexed.

Witness: *Thos. H. Berkey*, Clerk of the Superior Court, County of *Sacramento*, with the seal of the Court affixed, the *seventeenth* day of *April*, 1895.

By order of the Court.

G. H., Clerk.

STATE OF *California*, )  
*City and County of Sacramento.* ) ss.

I do solemnly swear that I will perform, according to law, the duties of *administrator* of the estate of *Andrew Morgan*, deceased.

(Subscribed and sworn to.)

NOTE 1.—In California, Arizona, Nevada, Idaho, Montana, Utah, and in North and South Dakota, and Wyoming, letters with the will annexed are formed by statute.

NOTE 2.—In Washington as follows, *substantially*:  
 [Title of Court and estate.]

In the Superior Court of the county of C. The last will of A B, deceased, a copy of which is hereunto annexed, having been proved and recorded in the said Superior Court, and (as the case may be), C D is hereby appointed administrator with the will annexed. Witness my hand and the seal of said Court this *fifth* day of *May*, A. D. 1895. Hill's Stats., sec. 899.

NOTE 3.—In Oregon the same as in letters of administration, but varied in wording so as to fit each case. Hill's Laws, sec. 1110.

NOTE 4.—In Colorado they must be issued in conformity to the form as it appears in note 11, to form "Letters Testamentary," that is to say, in the words of the statute, "as nearly as may be, taking care to make the necessary variations, additions, or omissions, to suit each particular case." Mills' Stats., sec. 499.

### No. 1039.—Letters of Administration.

[TITLE OF COURT AND ESTATE.]

STATE OF *California*, )  
*City and County of San Francisco.* ) ss.

*Mary Jones* is hereby appointed administratrix of the estate of *Thomas Jones*, deceased.

Witness: *Wm. A. Stuart*, Clerk of the Superior Court of the *City and County of San Francisco*, with the seal thereof affixed, the *sixteenth* day of *June*, 1894.

By order of the Court.

Clerk.

STATE OF CALIFORNIA, )  
*City and County of San Francisco.* ) ss.

I, *Mary Jones*, do solemnly swear that I will faithfully perform, according to law, the duties of administratrix of the estate of *Thomas Jones*, deceased.

MARY JONES.

(Subscribed and sworn to.)

NOTE 1.—In California the above form is the statute. C. C. P., sec. 1362.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2738.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5350.

NOTE 4.—In Montana the same. C. C. P., sec. 2422.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4034.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5704.

NOTE 7.—In Wyoming the same. Stats. 1890-91, p. 253.

NOTE 8.—In Washington. [Title of Court and Estate.] Whereas, A. B., late of A, on or about the ninth day of May, A. D. 1895, died intestate, leaving at the time of his death property in this State subject to administration, — now, therefore, know all men by these presents, that we do hereby appoint — administrator upon said estate, and hereby authorize him to administer the same according to law. Witness my hand and the seal of said Court this fifth day of —, 1895. Hill's Stats., sec. 904.

NOTE 9.—In Oregon. [Title of Court and Estate.] To all persons to whom these presents shall come, greeting: Know ye, that it appearing to the Court aforesaid, that A has died intestate, leaving at the time of his death property in this State, such Court has duly appointed B administrator of the estate of such A; this, therefore, authorizes the said B to administer the estate of the said A, deceased, according to law. In testi-



mony whereof, etc., the same as in letters testamentary. Letters to an administrator of the partnership with the will annexed, or to a special administrator, may be issued according to the foregoing forms with such variations as may be proper in the particular case. Hill's Laws, sec. 1110, p. 717.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1014.

NOTE 11.—In Colorado the statute prescribes the following form:

"STATE OF COLORADO,  
"County of A. } ss.

"The people of the State of Colorado, to all to whom these presents shall come, Greeting:  
"Know ye, that whereas, A B, of the County of C, and State of Colorado, died intestate, as it is said, on or about the fifth day of May, 1895, having at the time of his decease, personal property in this State which may be lost, destroyed, or diminished in value, if speedy care be not taken of the same; to the end therefore, that said property may be collected and preserved for those who shall appear to have a legal right or interest therein, we do hereby appoint C D, of the County of C, and State of Colorado, administrator of all and singular the goods and chattels, rights, and credits which were of the said A B, at the time of his decease, with full power and authority to secure and collect the said property and debts wheresoever the same may be found in this State, and to apply the same under the order of the Court to the payment of the debts of the deceased and the taxes accrued or accruing on the real or personal estate, and in general to do and perform all other acts which now or hereafter may be required of him by law." Mills' Stats., sec. 4698.

## No. 1040.—Letters of Administration—Special.

[TITLE OF COURT AND ESTATE.]

*John Wilson* is hereby appointed *special administrator of the estate of Henry Wiggins, deceased.*

Witness: *Wm. A. Stuart*, Clerk of the Superior Court in and for the *City and County of San Francisco*, with the seal of the said Court affixed, this *ninth day of May, 1895.*

By order of the Court.

NOTE 1.—In California, when there is delay in granting letters, or when such letters are granted irregularly, or no bond is filed as required, or when no application is made for letters, or when an executor or administrator dies, or is suspended or removed, the Superior Court, or a Judge, must appoint a special administrator to collect and take charge of the estate of the decedent, in whatever county the same may be, and to exercise other powers necessary for the preservation of the estate [or he may direct the public administrator of his county to take charge of the estate]. C. C. P., sec. 1141.

The statute gives no form, but the practice is to use the general statutory form of letters modified to suit circumstances.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2757.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5390.

NOTE 4.—In Montana the same. C. C. P., sec. 2500.

NOTE 5.—In Utah the same, except that part in brackets is omitted. Comp. Laws, sec. 4075.

NOTE 6.—In North and South Dakota the same as in Utah. Comp. Laws, sec. 5744.

NOTE 7.—In Wyoming the same as in Utah. Stats. 1890-91, sec. 1, p. 259.

NOTE 8.—In Washington, when, from any cause, there shall be a delay in granting letters, the Judge may appoint a special administrator (other than one of the parties) to collect and preserve the effects of the deceased; and, in case of an appeal from the decree appointing such special administrator, he shall, nevertheless, proceed in the execution of his trust, until he shall be otherwise ordered by the Appellate Court. Hill's Stats., sec. 931.

NOTE 9.—In Oregon, when there is delay in issuing letters, and the property is in danger of being lost, etc., the Court may appoint a special administrator, who shall qualify in like manner, and have the powers of an administrator generally, except that he is not authorized to pay the debts of or otherwise discharge any obligation against the deceased. Upon the issuing of letters testamentary or of administration the powers of the special administrator cease. Hill's Laws, sec. 1091, p. 711.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1055.

[Title of Court and Estate.]

NOTE 11.—In Colorado the following form will be good, and is varied to follow the statute:

"The People of the State of Colorado, to all to whom these presents shall come, Greeting:

"Know ye, that whereas A. B., late of the County of C., and State of Colorado, deceased, as it is said, had at his or her decease, personal property within this State, the administration whereof cannot be immediately granted to the persons by law



entitled thereto, but which, if speedy care be not taken, may be lost, destroyed, or diminished; to the end, therefore, that the same may be preserved, for those who shall appear to have a legal right or interest therein, we do hereby request and authorize C. D. (and E. F., if two shall be appointed), of the County of C., and State aforesaid, to collect and secure the said property, wheresoever the same may be in the State, whether it be goods, chattels, rights, or credits, and to make, or cause to be made, a true and perfect inventory thereof, and to exhibit the same, with all convenient speed, to the County Court of the said County of C., together with a reasonable account of his (or their) collection, acts, and doings, in the premises aforesaid." *Mills' Stats.*, sec. 4699.

### No. 1041.—Letters of Guardianship.

[TITLE OF COURT AND ESTATE.]

*Mary Jones*, is hereby appointed guardian of the *person and estate of William Jones*, a minor.

Witness, *Wm. A. Stuart*, Clerk of the Superior Court of the *City and County of San Francisco*, with the seal of the Court affixed, the *twelfth* day of *December*, 1895.

By order of the Court.

[SEAL.]

*WM. A. STUART*, Clerk.

STATE OF California }  
City and County of San Francisco. } ss.

I do solemnly swear that I will perform, according to law, the duties of guardian of the *person and estate of William Jones*, a minor.

Subscribed and sworn to.

NOTE 1.—In California the Superior Court of each county may appoint guardians for the persons and estates, or either of them, of minors who have no guardian legally appointed by will or deed, and who are inhabitants or residents of the county, or who reside without the State and have estate within the county. Such appointment may be made on the petition of any person on behalf of the minor, or on the petition of the minor, if fourteen year of age. Before making such appointment the Court must cause reasonable notice to be given to any person having the care of such minor, and to such relatives of the minor residing in the county as the Court may deem proper. *C. C. P.*, sec. 1747.

NOTE 2.—In Nevada the same, except the application may be made by a relative or by any other person interested in or befriending such minor. No qualification as to age. *Gen. Stats.*, sec. 543.

NOTE 3.—In Idaho the same as California. *Rev. Stats.*, sec. 5770.

NOTE 4.—In Montana the same as California. *C. C. P.*, sec. 2950.

NOTE 5.—In Utah the same as in California. *Comp. Laws*, sec. 4305.

NOTE 6.—In North and South Dakota the same as in Nevada. *Comp. Laws*, secs. 233-340, p. 272, *Rev. Stats.* 1885.

NOTE 7.—In Wyoming the same in meaning. *Stats.* 1890-91, sec. 1, p. 304.

NOTE 8.—In Washington the Court may appoint for minors residing in the county, who have no guardian appointed by will, or of nonresident minors having property in the county. *Hill's Stats.*, sec. 1125.

NOTE 9.—In Oregon the same as in Washington with the words "by will" omitted. *Hill's Laws*, vol. 1, sec. 2880, p. 1326.

NOTE 10.—In Arizona the same as in California in meaning. *Rev. Stats.*, sec. 1307.

NOTE 11.—Neither in Colorado, nor in any other place, is there a statute requiring letters to issue, but they are, or should be, given to the appointee. Hence, all courts issue certificates of appointment to guardians.

In Colorado, whenever it is represented to the Court that an orphan, minor, above the age of fourteen years, has no guardian, the Court issues a notification to the minor to appear at a time in the notification specified, and choose a guardian. If the minor neglects to choose the Court appoints one. If the minor, having a father living, shall be entitled to, or possessed of, any estate not derived from such father, the Court shall notify the father to appear and show cause why a guardian for such minor should not be appointed. This is the only notice provided for by statute, except on the sale of real estate. There is nothing in the law inconsistent with the use of a petition to call the Court's attention to the facts of the case; and, if used, this form is proper. *Mill's Laws*, secs. 2074, 2075.

**No. 1042.—Mortgage—Order of Court.**

This mortgage, made this *fifth* day of *May*, 1895. The estate of *Casper Dix*, deceased, mortgagor, *Mary Dix*, administratrix. Made by the order of the *Superior Court* of the *City and County of San Francisco*, State of *California* [Department No. 9], on *April 10*, 1895, to *Samuel Does*, mortgagee.

*Witnesseth*: That the said mortgagor mortgages to the mortgagee all that certain land [Description] as security for the payment to him of \$10,000 in gold coin of the *United States* on or before [giving date of when due], with interest thereon at the rate of seven per cent per annum, payable monthly on the first day of each month [not in advance].

(Signed and acknowledged by administratrix.)

NOTE (A).—It is the opinion of the writer that the administrator has no authority to insert any other covenant in the mortgage except those expressly authorized by statute. The usual [cutthroat covenants] so called as to compounding interest, attorneys' fees, payment of taxes, defending action, etc., are liable to do harm and should be excluded.

NOTE 1.—In California, after the making of the order to mortgage, the executor, administrator, or guardian of a minor, or of an incompetent person, shall execute, acknowledge, and deliver a mortgage of the premises for the amount and period specified in the order, setting forth in the mortgage that it is made by authority of the order and giving the date of such order. A certified copy of the order shall be recorded in the office of the County Recorder of every County in which the encumbered land or any portion thereof lies. C. C. P., part of sec. 1578. See notes to Nos. 1106, Petition to Mortgage, and No. 1071, Order to Show Cause. This form [No. 1042] of mortgage is statutory. It contains every thing necessary to constitute a binding obligation under the laws of the State of California. It is thought that any thing more wordy would serve to darken the contract.

**No. 1043.—Notice of Time for Proving Will.**

[TITLE OF COURT AND ESTATE.]

Notice is hereby given, that *Monday*, the *fifth* day of *May*, 1895, at 10 o'clock A. M., of said day, and the courtroom of said Court, at the *City Hall*, in the County of *Sacramento*, State of *California*, has been appointed as the time and place for proving the will of said *Paul Clifford*, deceased, and for hearing the application of *Timothy Markham* and *Gordon Bennett*, for the issuance to them of letters testamentary thereon.

NOTE 1.—In California, when a petition for probate of a will is filed and the will produced, the clerk sets the petition for hearing upon some day not less than ten nor more than thirty days from the production of the will. Notice of the hearing is given by the clerk by publishing in a newspaper of the county; if there is none, then by three written or printed notices posted at three of the most public places in the county. If the notice is published in a weekly newspaper it must appear therein on at least three different days of publication, and, if in a newspaper published oftener than once a week, it shall be so published that there must be at least ten days from the first to the last day of publication, both the first and the last day being included. If the notice is by posting it must be given at least ten days before the hearing. C. C. P., sec. 1303.

NOTE 2.—In Nevada the notice is given by the Clerk in some newspaper published in the county, if any, if not, then by posting the same as in California. See Gen. Stats., sec. 2679, as amended in Stats. 1887, p. 31.

NOTE 3.—In Idaho the same as in California, except the Judge orders the notice to be given. Rev. Stats., sec. 5901.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2325.

NOTE 5.—In Utah, if all persons interested appear at the time fixed for the probate of a will, then no notice of the application need be given; but if they do not appear then it must be established at the hearing that the notice was given of the application by posting by the Clerk of a [the petition for probate] in a conspicuous place for ten



days at the courthouse where the court is usually held. If the Court orders other notice than aforesaid it must be given. Stats. 1890, p. 109.

The act above quoted is very much "mixed." Its one virtue is that repeals acts in conflict with it.

Upon the whole it would seem that sections 3995-3996 of the Probate Law, in Comp. Laws, pp. 458, 459, are still in force. They are the same as in California.

NOTE 6.—In North and South Dakota the same as in Idaho. Comp. Laws, sec. 5664.

NOTE 7.—In Wyoming the same in moving as in California and notice of twenty days is given by publication. Stats. 1890-91, sec. 8, p. 246.

NOTE 8.—In Washington no notice is necessary. A person having a will in his possession may petition to have it probated. It is presumed that those interested will have information of the death of the testator and will appear in court and protect their interests. Hill's Stats., sec. 862.

NOTE 9.—In Oregon the same as in Washington. Hill's Laws, sec. 1084, p. 709.

NOTE 10.—In Arizona the same as in Idaho. Rev. Stats., sec. 973.

NOTE 11.—In Colorado the same as in Washington, but a citation is issued and served on the heirs at law. Mills' Stats., sec. 4669.

See Citation.

### No. 1044.—Notice for Posting of Application for Letters.

Notice is hereby given that *Mary Jones* has filed with the Clerk of this Court a petition, praying for letters of administration of the estate of *Thomas Jones*, deceased, and that *Monday*, the *fifteenth* day of *June*, 1895, at *eleven* o'clock A. M. of said day, at the *City Hall*, in the *City and County of San Francisco*, has been set for hearing said petition, when and where any person interested may appear and show cause why the said petition should not be granted.

(Signed and dated.)

NOTE 1.—In California, when a petition for letters of administration is filed, the Clerk gives notice by causing notices to be posted in at least three public places in the County, one of which must be at the place where the Court is held, containing the name of the decedent, the name of the applicant, and the time at which the application will be heard. Such notice must be given at least ten days before the hearing. C. C. P., sec. 1878.

NOTE 2.—In Nevada the same. Stats. 1887, p. 31, and Gen. Stats., sec. 2727.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5359.

NOTE 4.—In Montana the same. C. C. P., sec. 2442.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4043.

NOTE 6.—In North and South Dakota the same, except the *Judge must give the notice* and it must be published by printing or posting the same as an application for the probate of a will. Comp. Laws, sec. 5713.

NOTE 7.—In Wyoming no notice is necessary. A time for the hearing is appointed, and at the hearing letters are ordered. Stats. 1890-91, sec. 6, p. 255. But the Clerk must give notice of the application to the Court Commission of the County and the Judge of the Court. Id., sec. 7.

NOTE 8.—In Washington the same as in California. Hill's Stats., sec. 903.

NOTE 9.—In Oregon no notice is necessary. If the Court orders notice it is given by citation. Hill's Laws, sec. 1078, p. 705.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1023.

NOTE 11.—In Colorado no notice is necessary except when a person, not given a preference by statute, makes application; then notice must be given to the person entitled under prior right to the applicant. Mills' Stats., secs. 4696, 4697.

### No. 1045.—Notice of Sale of Personal Property.

(ADMINISTRATRIX'S SALE.)

[TITLE OF COURT AND ESTATE.]

Notice is hereby given, that in pursuance of an order of the Superior Court of the *City and County of San Francisco*, State of *California*, made on the *thirteenth* day of *August*, 1895, in the



matter of the estate of *Thomas Jones*, deceased, the undersigned, *administratrix of the estate* of said deceased, will sell at public auction [or will sell at private sale at (stating place) if preferable, or without stating place, but stating place where the executor or administrator may be found] to the highest bidder, for cash, gold coin of the United States, on Tuesday, the twenty-fifth day of August, 1895, at 12 o'clock M., at the auction salesrooms of *S. P. Middleton, 314 Montgomery Street*, in said City and County, the following personal property, to wit: *1 gold watch and chain, 25 shares of the Zenith Gold and Silver Mining Company, 100 shares of the Cornucopia Copper Mining Company, 50 shares of the Nellie and Julia Mining Company, and 5 shares of the Smoky Valley Mining Company.*

(Signed by *administratrix*.)

NOTE 1.—In California sales of personal property must be made at public auction, for [such money or currency as the Court may direct] and after public notice given for at least ten days, by notices posted in three public places in the county, or by publication in a newspaper, or both, containing the time and place of sale, and a [brief description of the property to be sold], unless, for good reasons shown, the Court, or a Judge thereof, orders a private sale or a shorter notice. Public sales of such property must be made at the courthouse door, or at the residence of the decedent, or at some other public place, but no sale shall be made of any personal property which is not present at the time of sale, unless the Court otherwise order. C. C. P., sec. 15-6.

NOTE 2.—In Nevada the same, except all that part in brackets is omitted. Rev. Stats., secs. 2821, 2822.

NOTE 3.—In Idaho, except the part in the first brackets is omitted. Rev. Stats., sec. 5498.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2654.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 4152.

NOTE 6.—In North and South Dakota the same as in California, or fifteen days' notice. Comp. Laws, sec. 5820.

NOTE 7.—In Wyoming the same as in California, except in the part in the first brackets, and all of that part at the end commencing with "Public sales," omitted. Stats., 890-91, p. 276.

NOTE 8.—In Washington sales are made at public auction after two weeks' notice by posting or publication as the Court may order. If by notices, then they must be posted in ten public places in the county, but the Court may order a private sale. Hill's Stats., secs. 1003, 1004.

NOTE 9.—In Oregon, when the order is made, the sale is conducted by the executor or administrator the same as execution sales. Hill's Laws, sec. 1144, p. 729.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1139.

NOTE 11.—In Colorado the sale is made after three weeks' notice by publication, or posting in three public places in the county as the Court directs. Mill's Stats., sec. 4739.

## No. 1046.—Notice of Sale of Real Estate—Auction.

[TITLE OF COURT AND ESTATE.]

NOTICE IS HEREBY GIVEN that in pursuance of an order of the Superior Court of the City and County of *San Francisco*, State of *California*, made on the seventh day of *December, 1895*, in the matter of the estate of *Thomas Jones*, deceased, the undersigned, the *administratrix of the said estate*, will sell at public auction [or will sell at private sale, etc.], to the highest bidder, for cash, gold coin of the United States, and subject to confirmation by said Superior Court, on *Monday, the fourth day of January, 1895*, at *twelve o'clock, M.*, at the auction salesrooms of *S. P. Middleton & Son, 314 Montgomery street*, in the City and County of *San Francisco*, all the right, title, interest, and estate of the said

*Thomas Jones* at the time of his death, and all the right, title, and interest that the estate has, by operation of law or otherwise, acquired other than or in addition to that of the said *Thomas Jones* at the time of his death, in and to all that certain lot, piece, or parcel of land situate, lying, and being in the said *City and County of San Francisco, State of California*, and bounded and described as follows, to wit:

[Description.]

Terms and conditions of sale: Cash, gold coin of the United States, ten per cent of the purchase money to be paid to the auctioneer on the day of sale, balance on confirmation of sale by said Superior Court. Deed at expense of purchaser.

(Signed by *administratrix*.)

NOTE 1.—In California, when a sale of land is ordered, and is to be made at public auction, notice of the time and place of sale must be posted in three of the most public places in the county in which the land is situated, and published in a newspaper, if there be one printed in the same county, but, if none, then in such paper as the Court may direct, for three weeks successively next before the sale. The lands and tenements to be sold must be described with common certainty in the notice. C. C. P., sec. 1647.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2832.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5515.

NOTE 4.—In Montana the same. C. C. P., sec. 2680.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4361.

NOTE 6.—In North and South Dakota. Sec. 5820.

NOTE 7.—In Wyoming notice of sale is unnecessary. The Court makes the order, and the person selling is presumed to give notice of some description. Stats. 1890-91, secs. 24, 25, p. 279.

NOTE 8.—In Washington the same as in California. When the sale is at public auction, notice of the time and place is posted in three of the most public places in the county where the land is situated, at least twenty days before the day of sale, and published in some newspaper of said county, if any there be, and if not, in some newspaper of this State, in general circulation in said county, for three successive weeks next before such sale, in which notice the lands and tenements shall be described with proper certainty. Hill's Stats., sec. 1016.

If it is at private sale, then the notice is the same as in California after fifteen days' notice. It must state a day on and after which the sale will be made. Stats. 1893, sec. 4, p. 86.

NOTE 9.—In Oregon the Clerk of the Court shall publish notice of sales at private the same as in California. Laws 1893, section 1, page 96, amending section 1150 of Hill's Laws.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1155.

NOTE 11.—In Colorado, when the petition to sell is filed, all persons interested are summoned to show cause by citation. [See Citation.] Mill's Stats., sec. 4752.

## No. 1047.—Notice to Creditors.

[TITLE OF COURT AND ESTATE.]

ESTATE OF *Thomas Jones*, deceased.—Notice is hereby given by the undersigned, *administratrix* of the estate of *Thomas Jones*, deceased, to the creditors of, and all persons having claims against, the said deceased, to exhibit them, with the necessary vouchers, within ten months after the first publication of this notice, to the said *administratrix*, at her residence, northeast corner of *Washington and Mason streets*, the same being the place for the transaction of the business of said estate, in the *City and County of San Francisco*.

(Signed and dated.)

See No. 1060. Order of Publication of Notice.



**No. 1048.—Notice by Clerk of Day for Hearing Return of Sale.**

[TITLE OF COURT AND ESTATE.]

Pursuant to an order of the *Judge* of said Court, made on the *sixth* day of *January*, 1895, notice is hereby given that *Mary Jones*, the *administratrix* of the estate of said deceased, made to the said Court, and filed in the office of the Clerk thereof, on said day, a return of sale made by her on the *fourth* day of *January*, 1895, under a previous order of said Court, of the following real estate, and for the following-named sum, to wit, the *southerly half of fifty-vara lot No. 690, in the City and County of San Francisco*, for the sum of *three thousand one hundred dollars*, as will more fully appear from said return filed as aforesaid, and to which reference is hereby made for further particulars.

And notice is hereby further given, that *Monday*, the *eighteenth* day of *January*, 1895, at *eleven o'clock A. M.*, at the courtroom of said Court, at the *Old City Hall*, in said *City* and County of *San Francisco*, has been fixed for hearing the said return, when and where any person interested in the said estate may appear and file written objections to the confirmation of the said sale, and may be heard and may produce witnesses in support of such objections.

Signed by Clerk.

See No. 1069. Order Fixing Day, etc.

**No. 1049.—Notice of Settlement of Account.**

[TITLE OF COURT AND ESTATE.]

Notice is hereby given that *Mary Jones*, the *administratrix* of the estate of *Thomas Jones*, deceased, has rendered and presented for settlement, and filed in said Court, her *annual* account of her administration of said estate; and that *Monday*, the *twenty-seventh* day of *June*, 1895, at *eleven o'clock A. M.*, at the courtroom of said Court, at the *City Hall* in *San Francisco*, in said *City* and County, has been duly appointed by the *Judge* [or by the] said Court, for the settlement of said account, at which time and place any person interested in said estate may appear and file exceptions in writing to the said account, and contest the same.

(Signed by Clerk.)

NOTE 1.—In California, when an account is rendered for settlement, the Clerk appoints a day for the settlement, and thereupon gives notice by posting in at least three public places in the County, setting forth the name of the estate, the executor or administrator, and the day appointed for the settlement. If, upon the final hearing at the time of settlement, the Court deems the notice insufficient, he may order such further notice to be given as may seem to him proper. C. C. P., sec. 1633.

NOTE 2.—In Nevada the same as in Idaho, except the Clerk sets the hearing instead of the Judge. Stats. 1887, pp. 31, 32. Gen. Stats., 2902.

NOTE 3.—In Idaho the same, except the Judge causes the Clerk to give the notice, and the return day of the notice [or day of hearing] must be some day of the Court's term. Rev. Stats., 5598.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2791.

NOTE 5.—In Utah the same as in Idaho. Comp. Laws, sec. 4237.



NOTE 6.—In North and South Dakota the same as in Idaho. Comp. Laws, sec. 5900.

NOTE 7.—In Wyoming the Court appoints the day for settlement. Notice by statute is not necessary except the Court may order it to be given. Stats. 1890, sec. 17, p. 290.

NOTE 8.—In Washington the same as in Idaho, with a provision for publication of the notice if the Judge directs, and the hearing must be had at some day not more than six weeks after the filing of the account. Hill's Stats., sec. 1069.

NOTE 9.—In Oregon the Courts order the same notice given "in the same manner as the notice of an appointment of administrator." Hill's Laws, sec. 1173, p. 738.

There being no statutory directions requiring notice of the appointment of an administrator to be given and there being a statute requiring the administrator to give notice to creditors, *Id.*, sec. 1131, p. 721, it is presumed that the last is the notice referred to.

NOTE 10.—In Arizona the same as in Idaho, except the names of the estate and the executor need not be given. Gen. Stats., sec. 1224.

## No. 1050.—Notice—Special—With Affidavit of Posting.

[TITLE OF COURT AND ESTATE.]

Notice is hereby given that *John Doe* having filed in this Court [state what paper has been filed, and what is demanded] of the estate of *Richard Roe*, deceased, the hearing [of which petition or other matter] has been fixed by said Court for *Monday, the first day of April, 1895, at ten o'clock A. M.*, said day, at the courtroom thereof, at the *City Hall*, in *City and County of San Francisco*, and all persons interested in said estate are notified then and there to appear and show cause, if any they have, why the said [petition should not be granted, or order made, etc.]

(Signed by Clerk.)

## Affidavit of Posting Above Notice.

STATE OF *California*,  
*City and County of San Francisco.* } ss.

*John Love*, being duly sworn, says, that *he* is over the age of eighteen years, and not interested in the estate of *Richard Roe*, deceased, and is not a party thereto; that on the *first day of March, 1895*, he posted three notices, of which the above is a copy, in three of the most public places in the said *City and County*, to wit, one of said notices at the *United States Postoffice*, one at the *Old City Hall*, and one at the place where the said Superior Court is held, in said *City and County*.

(Subscribed and sworn to.)

## No. 1051.—Notice—For any Purpose.

[TITLE OF COURT AND ESTATE.]

IN THE SUPERIOR COURT of the *City and County of San Francisco*,  
*State of California.*

Notice is hereby given that *John Doe*, having filed in this Court [state what paper has been filed and what is demanded] of the estate of *Richard Roe*, deceased, the hearing of which has been fixed by said Court for *Monday, the first day of April, 1895, at ten o'clock A. M.* of said day, at the courtroom thereof, at the *City Hall* in the *City and County of San Francisco*; and all persons

interested in said estate are notified then and there to appear and show cause, if any there be, why the said *[petition should not be granted, or order made, etc.]*

(Signed by Clerk.)

### No. 1052.—Objections to the Appointment of Executor. [See form next following.]

[TITLE OF COURT AND ESTATE.]

Now comes *Amanda Wilcox*, widow of said deceased, and objecting to the appointment of *Henry Wilson*, executor; for cause why he should not be appointed alleges: That said *Henry Wilson* is a man of bad repute; an idle and dissolute person and is not possessed of any property whatever, and his name is not on the assessment-roll at any place in said State. That said *Henry Wilson* has a brother named *Harvey Wilson*, who was a warm personal friend of said deceased, and his constant companion; and a man of good repute; a well-to-do merchant and assessed in said county for property worth \$100,000. That deceased requested said *Harvey Wilson* to serve as his executor and notified him that he had appointed him executor without bonds, and, therefore, contestant alleges that deceased by mistake wrote the name of his executor *Henry* instead of *Harvey Wilson*. Wherefore, etc. [at the same time file a petition for letters with the will annexed].

NOTE 1.—In California any person interested may file objections to granting letters to the person named as executor. At the same time a petition may be filed for letters with the will annexed. C. C. P., sec. 1351.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2710.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5342.

NOTE 4.—In Montana the same. C. C. P., secs. 2329, 2330.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4026.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5696.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 3, p. 252.

NOTE 8.—In Washington the same, except it is not affirmatively enacted that a petition for letters with the will annexed may be filed at the same time, but it may be done not only there, but in all other places without special permission. Hill's Stats., sec. 885.

NOTE 9.—In Arizona the same as in California. Rev. Stats., sec. 1006.

NOTE 10.—In Oregon the same under the Court's equitable powers. Hill's Laws, secs. 1077, 1078, p. 705, also, sec. 1108, p. 716.

NOTE 11.—In Colorado the same as in California. Mills' Stats., sec. 4635.

### No. 1053.—Objections to the Appointment of Administrator. (A)

[TITLE OF COURT AND ESTATE.]

Now comes *Samuel A. Jones*, a son of said deceased, and objecting to the appointment of *Mary A. Jones* [mother of this objector and widow of said deceased], administratrix of this estate; for reasons why she should not be appointed alleges: That said *Mary A. Jones* is a nonresident of this State and a resident of the State of Nevada;

NOTE (A).—This will also do for opposition to the appointing of executor.

*That she is incompetent to perform the duties of administratrix of said estate because of her want of understanding in this: She can neither read, write, nor speak the English language; and also because she has no knowledge of business, and has not sufficient business capacity to manage said estate;*

*Or, She was on the 10th day of May, 1894, adjudged by the Superior Court of Sierra County, California, a Court of competent jurisdiction, to be incompetent to transact business, and said adjudication has never been modified or set aside and is now in force; and she is now incompetent as in said decree adjudged. This contestant further alleges that he is entitled, after his mother, to letters of administration on said estate.*

Wherefore this contestant prays that the application of said *Mary A. Jones* be denied and that letters be issued to this contestant.

NOTE 1.—In California any person interested may contest the application for letters of administration by filing opposition on the ground of the incompetency of the applicant, and may assert his own rights to the administration and pray for letters for himself. C. C. P., sec. 1374.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2723.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5360.

NOTE 4.—In Montana the same. C. C. P., sec. 2443.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4044.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5714.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 8, p. 255.

NOTE 8.—In Washington the same. Hill's Stats., sec. 885.

NOTE 9.—In Oregon the same, under the Court's general powers. Hill's Laws, sec. 1077, 1078, p. 705; also sec. 1108, p. 716.

NOTE 10.—In Colorado the same. Mills' Stats., sec. 4685.

NOTE 11.—In Arizona the same. Rev. Stats., sec. 1024.

## **No. 1054.—Order Appointing Time for Probate of Will and Directing Publication of Notice.**

[TITLE OF COURT AND ESTATE.]

IN THE *District Court* of the County of *Storey*, State of *Nevada*.

IN THE MATTER OF THE ESTATE OF }

*Paul Clifford*,

Deceased. }

A document purporting to be the last Will and Testament of *Paul Clifford*, deceased, having on the *eighteenth* day of *April 1895*, come into the possession of said *District Court*, and a petition for probate thereof, and for the issuance of letters *testamentary* to *Timothy Markham* and *Gordon Bennett* having been filed by them:

It is hereby ordered that *Monday*, the *second* day of *May, 1895*, at *eleven o'clock A. M.* of said day, the same being a regular term day of the March term, 1895, at the courtroom of said Court, at the courthouse, in *Virginia City*, County of *Storey*, be, and the same is hereby, appointed the time and place for proving said will and hearing said application, when and where any person interested may appear and contest the said will, and may file



objections in writing to the granting of letters *testamentary* to said petitioners.

And it is further ordered that notice be given thereof by the Clerk of said Court, by publication not less than ten days before said *second* day of *May, 1895*, in the *Territorial Enterprise*, a newspaper printed and published in said county.

(Signed by Judge.)

NOTE 1.—In California and all other places, see No. 1043, "Notice of Time Appointed for Probate of Will."

## No. 1055.—Order Appointing Attorney to Contest Will.

[TITLE OF COURT AND ESTATE.]

It is ordered by the Court, that *Robert Harrison*, Esquire, attorney at law, be, and he hereby is, appointed attorney to appear in the matter of said estate and contest the will of said deceased now on file in said Court, on behalf of *John C. Bates*, Esquire, the son of said deceased, mentioned in said will. [The same order may be used on behalf of all or any other person.]

Dated, *etc.*

NOTE 1.—In California any person interested may appear and contest the will. Devisees, legatees, or heirs of an estate may contest the will through their guardians, or attorneys appointed by themselves or by the Court for that purpose. It would also seem that after the attorney has been appointed that the guardian of the estate of the minor would have the right to uphold the will [on behalf of his ward] even against the opposition of the attorney appointed by the Court. Especially would this be so when a parent is guardian of the estate. A parent's interest in his child's welfare will be presumed to be greater than that of an attorney appointed by the Court who [of course] expects a fee out of the estate. *Point d'argent, point de Suisse*. C. C. P., sec. 1307.

NOTE 2.—In Nevada any interested person may contest, but minors and nonresidents may be represented by an attorney appointed by the Court. Gen. Stats., sec. 2684. They may also contest without such appointment.

NOTE 3.—In Idaho the same as in California; and creditors are expressly named, though implied in California, and the class of persons interested. Rev. Stats., sec. 5305.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2329.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 3999.

NOTE 6.—In North and South Dakota the same as in California. Comp. Laws, sec. 5668.

NOTE 7.—In Wyoming the same as in California. Stats. 1890-91, sec. 1, p. 245.

NOTE 8.—In Washington any person interested may appear and contest within one year after probate. Hill's Laws, sec. 872. At such contest the Court will appoint guardians *ad litem*, etc., under its general powers as in other civil proceedings. Id., sec. 142.

NOTE 9.—In Oregon there are no special provisions as to who may contest, nor how or when, except as found in the general statute of limitation of action.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 977.

NOTE 11.—In Colorado the issue is made up as in other civil proceedings and is conducted the same as in Oregon and Washington. Mills' Stats., sec. 4679.

## No. 1056.—Order Appointing Attorney for Minor Heirs, etc.

[TITLE OF COURT AND ESTATE.]

It is hereby ordered, that *Creed Haymond*, Esq., a competent and disinterested attorney of this Court, be, and he is hereby, appointed the attorney to represent in all the proceedings in this Court in the settlement of said estate, where such representation is necessary, the devisees, legatees, heirs, and creditors of said deceased, who are minors and have no general guardian in said

county, or who are nonresidents of the State, as also all interested parties, who are unrepresented. The following are the names of the persons for whom said attorney is hereby appointed: *Jane Clifford, Charles Clifford, and Elizabeth Clifford* [or the order may be generally to represent all persons interested, not minors, and not residents of the State, who are unrepresented; or the order may name the persons who are to be represented by the Court's appointee].

NOTE 1.—In California, at or before the hearing of petitions and contests for the probate of wills, for letters testamentary or of administration; for sales of real estate, and confirmations thereof: settlements, partitions, and distribution of estates, setting apart homesteads, and all other proceedings where all the parties interested in the estate are required to be notified thereof: the Court may, in its discretion, appoint some competent attorney at law to represent in all such proceedings the devisees, legatees, heirs, or creditors of the decedent who are minors and have no general guardian in the county, or who are nonresidents of the State, and those interested who, though they are neither such minors or nonresidents, are unrepresented. The order must specify the names of the parties, so far as known, for whom the attorney is appointed, who is thereby authorized to represent such parties in all such proceedings had subsequent to his appointment. The attorney may receive a fee, to be fixed by the Court, for his services, which must be paid out of the funds of the estate as necessary expenses of administration, and upon distribution may be charged to the party represented by the attorney. If, for any cause, it becomes necessary the Court may substitute another attorney for the one first appointed, in which case the fee must be proportionately divided. The nonappointment of an attorney will not affect the validity of any of the proceedings. C. C. P., sec. 1718. See notes to No. 1055.

NOTE 2.—In Nevada, when application to sell real estate is made [Gen. Stats., sec. 2828], when accounts are heard [Id., sec. 2904], the Court may appoint an attorney the same as in California, and he is entitled to a reasonable fee to be paid, not by his client, but out of the whole estate. Id., sec. 2964. The statute. On the whole, with the said variations, the law is the same in practice as in California.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 5669.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2925.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4299.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5958.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 12, p. 302.

NOTE 8.—In Washington, upon application to sell real estate, a copy of the order to show cause is served on a minor's guardian if any, but, if they have none, the Court appoints some disinterested person for the sole purpose of taking care of their interests in the proceedings. Hill's Laws, sec. 1009.

If there is a minor interested who has no guardian the Court appoints some disinterested person to represent him, who may contest the account and is allowed a reasonable compensation. Id., 1071.

NOTE 9.—In Oregon the general guardian or *guardian ad litem* attends to all his ward's interests in such proceedings. Hill's Laws, sec. 32, p. 156.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1290.

NOTE 11.—In Colorado in such case the Court appoints a guardian to represent the minor upon probate of a will, and the Court may also appoint a *guardian ad litem*. Mill's Stats., secs. 4666-4668, also Stats. 1893, p. 235.

## No. 1057.—Order Admitting Will to Probate and Appointment of Executor.

(TO BE USED AS APPEARS IN NOTE "A.")

[TITLE OF COURT AND ESTATE.]

The petition of *Daniel Burns* heretofore filed in the above-en-

NOTE (A).—This order is drawn in the spirit of the liberal language of section 1704, C. C. P., providing "that orders and decrees made by the Court, or a Judge thereof, in probate proceedings, need not recite the existence of facts, or the performance of acts upon which the jurisdiction of the Court or Judge may depend, but it shall only be necessary that they contain the matters ordered or adjudged, except as otherwise provided. It may be used in California [C. C. P., sec. 1704]; in Montana [Comp. Laws, sec. 314, p. 353]; in Utah [Comp. Laws, sec. 4286]; in North and South Dakota [Comp. Laws, sec. 5949]; in Wyoming [Stats. 1890-91, sec. 1, p. 301]; and in Arizona [Rev. Stats., sec. 1278]. In Oregon there are no particular pleadings or forms in probate matters. Hill's Laws, sec. 1077, p. 705.

See the next following form for the same order in Nevada.



titled matter praying for the admission to probate of a certain document filed herein, purporting to be the last will and testament of *H. H. Markham*, deceased, and also praying to be appointed executor thereof, coming on this day to be heard; and said matter having been submitted: It is ordered that said document be admitted to probate as the last will and testament of said deceased, that said *Daniel Burns* be, and he is hereby, appointed executor thereof, and that letters testamentary thereon issue to said petitioner upon taking the oath required by law.

(Dated and signed.)

NOTE 1.—In California, if no person appears to contest the probate of a will, the Court may admit it to probate on the testimony of one of the subscribing witnesses only, if he testifies that the will was executed in all particulars as required by law, and that the testator was of sound mind at the time of its execution. C. C. P., sec. 1308.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2685.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5306.

NOTE 4.—In Montana the same. C. C. P., sec. 2330.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4000.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5669.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 12, p. 247.  
See notes to next form following.

NOTE 8.—In Wash. gton, after probate of a will, letters shall be issued to a person entitled. Hill's Stats., sec. 884.

NOTE 9.—In Oregon. See Hill's Laws, sec. 1085, p. 709.

## No. 1058.—Order Admitting Will to Probate and Appointing Executor.

[TITLE OF COURT AND ESTATE.]

The petition of *Timothy Markham and Gordon Bennett*, heretofore filed in the above-entitled matter, praying for the admission to probate of a certain document filed herein, purporting to be the last will and testament of *Paul Clifford*, deceased, and to be appointed executor thereof, and that letters testamentary be granted to said petitioner, this day regularly coming on to be heard; and due proof being made that notice has been duly given of the time appointed for proving said will, and for hearing said petition, according to law, to all parties interested; and, after examining the said petitioner and *Moses King and Homer Willard*, the subscribing witnesses to said will, from which it appears that said document is the last will and testament of said *Paul Clifford*, deceased; that it was executed in all particulars as required by law, and that the said testator, at the time of the execution of the same, was of sound and disposing mind, and not acting under undue influence, menace, fraud, or duress, and that said testator died on the *eleventh day of April, 1895*; that he was a resident of the County of *Sacramento*, in the State of *California*, at the time of his death; that the value of said estate is estimated at *one hundred and twenty-five thousand dollars*:

It is ordered that the said document heretofore filed, purporting to be the last will and testament of said *Paul Clifford*,



deceased, be admitted to probate as the last will and testament of said deceased; that said *Timothy Markham and Gordon Bennett* be, and *they are* hereby, appointed executors thereof, and that letters testamentary thereon issue to said petitioners upon taking the oath required by law, *it being expressly provided in said will that no bond shall be required of the executor.*

(Dated and signed.)

See notes to No. 1057.

### No. 1059.—Order Appointing Administrator.

[TITLE OF COURT AND ESTATE.]

The petition of *Henry Jones*, praying for letters of administration of the estate of *Thomas Jones*, deceased, coming on regularly to be heard; and due proof having been made to the satisfaction of this Court that the Clerk had given notice in all respects according to law; and all and singular the law and the evidence being by the Court understood and fully considered: Whereupon it is by the Court here adjudged and decreed that said *Thomas Jones* died on the *seventeenth* day of *May, 1895*, intestate, in the *City and County of San Francisco*; that he was a resident of said City and County at the time of his death, and that he left estate in the *City and County of San Francisco*, and within the jurisdiction of this Court.

It is ordered, that letters of administration of the estate of the said *Thomas Jones*, deceased, issue to the said petitioner, *Henry Jones*, upon his taking the oath and filing a bond according to law, in the sum of *ten thousand seven hundred* dollars.

Signed, *etc.*

NOTE 1.—In California, on the hearing, it being first proved that notice has been given of the application, the Court hears the proofs and then orders letters to issue to the party entitled. C. C. P., sec. 1375.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2729.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5361.

NOTE 4.—In Montana the same. C. C. P., sec. 2444.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4045.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 571A.

NOTE 7.—In Wyoming the same. Stats., 1890-91, sec. 9, p. 255.

NOTE 8.—In Washington, Oregon, and Colorado the statutes [without special command] take it for granted that the Court will order letters to issue to the persons entitled.

NOTE 9.—In Arizona the same as in California. Rev. Stats., sec. 1025.

### No. 1060.—Orders of Publication of Notice to Creditors—a.

[TITLE OF COURT AND ESTATE.]

It is ordered that notice to the creditors of *Thomas Jones*, deceased, requiring all persons having claims against the said deceased to exhibit them, with the necessary vouchers, to the *administratrix* of the estate of said deceased, be given by said *administratrix* by publication in the *Daily Evening Bulletin*, a news-

NOTE A.—See Nos. 1010-1019, Creditor's Claim.

paper printed and published in the *City and County of San Francisco*, at least *once* a week for *four* weeks.

Signed, *etc.*

### No. 1061.—Order of Publication of Notice to Creditors—b.

[TITLE OF COURT AND ESTATE.]

It is ordered that notice to the creditors of said decedent, pursuant to section 1490 of the Code of Civil Procedure, be published *once* a week for *four* weeks.

(Dated and signed.)

NOTE 1.—In California the executor or administrator must, immediately after his appointment, publish in some newspaper of the county, if there be one, if not, then in such newspaper as may be designated by the Court, a notice to the creditors of the decedent, requiring them to exhibit their claims with the necessary vouchers, to the giver of the notice at the place of his residence or business, to be specified in the notice; such notice must be published as often as the Judge or Court shall direct, but not less than once a week for four weeks. [The Court or Judge may also direct additional notice by publication or posting. In case such executor or administrator resigns, or is removed, before the time expressed in the notice, his successor must give notice only for the unexpired time allowed for such presentation.] C. C. P., sec. 1490. [See Creditor's Claim.]

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2797. [As amended in Stats. 1890-91, p. 105.]

NOTE 3.—In Idaho the same, but, if no paper is published in the county, the notice must be posted in three public places in the county for at least four weeks or more, as the Court may direct. One copy must be posted at the courthouse door. Rev. Stats., sec. 5460.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2600.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 4120.

NOTE 6.—In North and South Dakota the same as in California. Comp. Laws, sec. 5787.

NOTE 7.—In Wyoming the notice must be given *within thirty days after letters are granted*. It must be published three weeks, and the claims must be presented within six months *after the date of the letters*, "or they [the creditors] may be precluded from any benefit from such estate, and that, if such claims be not exhibited within one year from the date of the said letters, *they shall be forever debarred*." Whenever there is more than one executor or administrator the notice published and signed by one of them shall be sufficient." Stats. 1890-91, sec. 1, pp. 269, 270.

These two unusual provisions evidently mean that all the claims presented within six months will be paid in full, if the estate up to that time is solvent, but, if presented after six months and within one year, they will only take what remains. The Oregon statutes express in words what Wyoming intends. See Note 9 below.

NOTE 8.—In Washington the same as in California, except the part in brackets is omitted. Hill's Stats., sec. 977.

NOTE 9.—In Oregon the same as in California, to present the claims within six months. A claim not presented within six months is not barred, but it cannot be paid until all claims presented within six months are satisfied. Hill's Laws, secs. 1131, 1132, p. 724.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1107.

NOTE 11.—In Colorado see form Creditor's Claim.

### No. 1062.—Order Providing for Support of Family until Return of Inventory.

[TITLE OF COURT AND ESTATE.]

On reading and filing the petition of *Mary Jones, the administratrix* of the estate of *Thomas John*, deceased, praying that an allowance for the support of the family of said deceased be made out of the estate of said deceased, until the return of the inventory:

It is hereby ordered, that the sum of *one hundred* dollars per month, *gold coin of the United States*, be appropriated out of said estate for the support of said family, until the inventory be returned, and *Mary Jones, the administratrix of the estate of said*

deceased, is hereby ordered to pay the same monthly, on the *eighteenth* day of each and every month, to the *widow of said deceased*, until said inventory be returned, or until the further order of the Court.

(Signed by Judge.)

NOTE 1.—In California, when a person dies, leaving a widow or minor children, the widow or children, until letters are granted and the inventory is returned, are entitled to remain in possession of the homestead, of all the wearing apparel of the family, and of all the household furniture of the decedent, and are also entitled to a reasonable provision for their support, to be allowed by the Court, or a Judge thereof. C. C. P., sec. 1464. See Note 11 below.

NOTE 2.—In Nevada the same as in California. Gen. Stats., sec. 2789.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5440.

NOTE 4.—In Montana, the same. C. C. P., sec. 2580.

NOTE 5.—In Utah, the same. Comp. Laws, sec. 4113.

NOTE 6.—In North and South Dakota the survivor may remain in possession of homestead, and, upon the death of father and mother, the children may until the youngest is of age. Comp. Laws, sec. 5778. See Note 11 below for further references.

NOTE 7.—In Wyoming the same. Stats. 1890-91. sec. 1, p. 266.

NOTE 8.—In Washington a widow or minor child or children, the widow, child, or children is entitled to remain in possession of the homestead, and of all the wearing apparel of the family, and of all the household furniture. Hill's Stats., sec. 972.

NOTE 9.—In Oregon the same as in California. Hill's Laws, sec. 1126, p. 722.

NOTE 10.—In Arizona the same. Rev. Stats., sec. 1093.

NOTE 11.—In Colorado see Note 11 to Form "Decree Setting Apart Homestead for Use of the Family."

## No. 1063.—Order Setting Apart Personal Property for Use of Family, and Making Family Allowance.

[TITLE OF COURT AND ESTATE.]

*Mary Jones, the administratrix of the estate of Thomas Jones*, deceased, having this day made application to the *Judge of this Court*, by petition, for an order setting apart, for the use of the family of the said deceased, all personal property which is by law exempt from execution, and making family allowance, and the matter having been duly considered:

It is hereby ordered, that the following articles of personal property, to wit: *one parlor stove, one cooking-stove, one large mirror, two small mirrors, five carpets, four bedsteads, beds and bedding, twelve chairs, three tables, one desk, and one sofa*, be, and the same are hereby, set apart for the use of the family of the said deceased; and that the same shall not be subject to administration.

And it is further ordered, that an allowance of *one hundred dollars per month, gold coin of the United States*, be, and is hereby, made for the maintenance of said family, out of the estate, during the progress of the settlement of said estate, and the *administratrix of said estate* is hereby ordered to pay the same monthly, on the *sixth* day of each and every month, out of the funds of said estate, in preference to all other charges, except funeral charges, and expenses of administration, until the further order of this Court.

(Signed by Judge.)

See No. 1021 and notes.



**No. 1064.—Order Appointing Time—Sale of Personal Property.**

[TITLE OF COURT AND ESTATE.]

On reading and filing the petition of *Mary Jones*, the administratrix of the estate of *Thomas Jones*, deceased, praying for an order to sell the whole, or so much of the personal property belonging to said estate as shall be necessary for the payment of certain claims allowed against said estate, the expenses of the administration, and the allowance to the family of said deceased:

It is ordered, that all persons interested in said estate appear before the undersigned, the Judge of the Superior Court of the City and County of San Francisco, State of California, at the courtroom of said Court, at the Old City Hall in said City and County, on the thirteenth day of August, 1895, at eleven o'clock A. M., then and there to show cause why such order should not be made.

And it is further ordered, that a copy of this order be published in the *Daily Evening Bulletin*, a newspaper published [or be posted in three public places] in said City and County, at least five days previous to said third day of August, 1895.

Signed by

, Judge.

NOTE 1.—In California, if claims against the estate have been allowed, and the sale of property is necessary for their payment, or for the expenses of administration [or for the payment of legacies], the executor or administrator may apply for an order to sell so much of the personal property as may be necessary therefor. Upon filing his petition, notice of at least five days must be given of the hearing of the application, either by posting notices or by advertising. He may also make a similar application, from time to time, so long as any personal property remains in his hands, and sale thereof is necessary. If it appear for the best interests of the estate, he may, at any time after filing the inventory in like manner, and after giving like notice, apply for and obtain an order to sell the whole of the personal property belonging to the estate, whether necessary to pay debts or not. C. C. P., sec. 1523.

NOTE 2.—In Nevada the same in meaning. Gen. Stats., sec. 2819.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 5495.

NOTE 4.—In Montana the same. C. C. P., sec. 2651.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4149.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5817.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 6, p. 275.

NOTE 8.—In Washington, at any time after the claims have been approved, or, if it is necessary to sell to pay the expenses of administration, an order may be made to sell to realize sufficient to pay the debts and expenses. Hill's Stats., sec. 1001.

NOTE 9.—In Oregon, when the inventory is filed, or at the next term of the Court, the executor or administrator may make an application to sell the personal property of the estate for the purpose of paying the funeral charges, expenses of administration, the claims, if any, against the estate, and for the purposes of distribution, and the Judge grants such order, if, in his judgment, it is for the best interest of the estate, and directs the terms of sale, whether for cash or on credit. Hill's Laws, sec. 1142, p. 729.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1136.

NOTE 11.—In Colorado the same petition and the same order as in California, although the wording of the law is different. Mill's Stats., sec. 4739.

**No. 1065.—Order of Sale of Personal Property.**

[TITLE OF COURT AND ESTATE.]

The application of *Mary Jones*, administratrix of the estate of *Thomas Jones*, deceased, for an order to sell certain personal property, described in her petition filed herein on the sixth day of

August, 1895, and hereinafter particularly described, coming on regularly to be heard, this *thirteenth day of August, 1895*:

It is hereby ordered, adjudged, and decreed, that the said administratrix sell the following personal property, to wit: 1 gold watch and chain, 25 shares of the Zenith Gold and Silver Mining Company, 100 shares of the Cornucopia Copper Mining Company, 50 shares of the Nellie and Julia Mining Company, and 5 shares of the Smoky Valley Mining Company, at public auction and after public notice given for at least ten days by publication in the *Daily Chronicle*, a newspaper published in said City and County [or by notices posted in three public places in said City and County], in which notice shall be specified the time and place of sale.

[And it is further ordered, that the sale of said property be made in front of the old City Hall in said City and County, or at the late residence of deceased, or at some other public place to me named in said notice.] And it is further ordered that the following described articles be sold first [enumerating them. See italics in note 1.]

Signed by

, Judge.

NOTE 1. In California, if a sale is necessary to pay debts, or the family allowance, or for the best interest of the estate and the persons interested in the property to be sold, the Court orders it sold. [In making such orders articles not necessary for the support of the family, or are not specially bequeathed, must be first sold, and the Court or Judge must so direct.] C. C. P., sec. 1525.

NOTE 2.—In Nevada the same. Rev. Stats., sec. 2820.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5497.

NOTE 4.—In Montana the same. C. C. P., sec. 2653.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4151.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5819.

NOTE 7.—See note 7, next preceding form.

NOTE 8.—In Washington the same as that part of note 1 in brackets. Hill's Stats., secs. 1001, 1002.

NOTE 9.—See note 9 to form next preceding.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1133.

NOTE 11.—In Colorado, see note 11 to form next preceding.

## No. 1066.—Order Approving Sale of Personal Property.

[TITLE OF COURT AND ESTATE.]

Mary Jones, the administratrix of the estate of Thomas Jones, deceased, having duly returned to this Court, and filed herein an account and report, verified by her affidavit, of sales made by her under the order of the Judge of this Court, dated on the *thirteenth day of August, 1895*, and having also filed a petition praying that said sales be confirmed and approved;

And the matter coming on regularly to be heard this *seventh day of September, 1895*, and it duly appearing to the satisfaction of the Judge of said Court that said sale was properly conducted and legally made, and that due notice of the time and place was given, as required by law and the order of the Judge of this Court:

It is ordered and decreed that the said sale be, and the same is hereby, confirmed and approved, and declared valid.

Signed by

, Judge.

See Nos. 1064, 1065 and notes.



## No. 1067.—Order to Show Cause.

[TITLE OF COURT AND ESTATE.]

*Mary Jones, the administratrix of the estate of Thomas Jones, deceased, having filed her petition herein praying for an order of sale of certain part of the real estate of said decedent, for the purposes therein set forth, it is therefore ordered by the Judge of [or by the] said Court, that all persons interested in the estate of said deceased appear before the said Superior Court on Monday, the seventh day of December, 1895, at eleven o'clock in the forenoon of said day, at the courtroom of said Superior Court, at the City Hall, in said City and County of San Francisco, to show cause why an order should not be granted to the said administratrix to sell so much of the real estate of the said deceased, at private sale, as shall be necessary; and that a copy of this order be published at least four successive weeks in The Daily Morning Call, a newspaper printed and published in said City and County.*

Signed by \_\_\_\_\_, Judge.

NOTE 1.—In California, if it appears to the Court that it is necessary to sell the whole or some portion of the real estate, an order must be made directing all persons interested in the estate to appear before the Court, at a time and place specified, not less than four nor more than ten weeks from the time of making of such order, to show cause why an order should not be granted to the executor or administrator to sell so much of the real estate of the decedent as is necessary. C. C. P., sec. 1538.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2825.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5506.

NOTE 4.—In Montana the same. C. C. P., sec. 2672.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4160.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5823.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 16, p. 277.

NOTE 8.—In Washington the same within not less than four nor more than eight weeks from from date of order. Hill's Stats., sec. 1006.

NOTE 9.—In Oregon a citation issues to the devisees and heirs, and to all others unknown, to appear at a term of Court, not less than ten days after the service of such citation, to show cause, if any exist, why an order of sale should not be made as in the petition prayed for. Hill's Laws, sec. 1147, p. 730.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1147.

NOTE 11.—In Colorado the order to show cause takes the form of citation or summons. It is directed to the Sheriff of the county, and a return day is stated in it, and, to insure some capacity in the officer, he must read the summons to each defendant named in it. Mills' Stats., secs. 4752-4755.

## No. 1068.—Order of Sale of Real Estate.

[TITLE OF COURT AND ESTATE.]

*Mary Jones, the administratrix of the estate of Thomas Jones, deceased, having, on the fifth day of November, 1895, presented to [or the Judge of] the Superior Court, and filed herein her petition in due form, verified by her oath, praying for an order authorizing her to sell so much and such parts of the real estate belonging to the estate of said deceased, for purposes therein stated; said matter coming on regularly to be heard the seventh day of December, 1895, and, upon due proof to the satisfaction of the Court, of the due publication of a copy of the said order to show cause, as required by law and the order of this Court; and all*



and singular the law and the evidence being by the Court understood and duly considered:

Whereupon it is ordered, adjudged, and decreed, that said *Mary Jones, administratrix of the estate of Thomas Jones, deceased*, be and she is hereby authorized to sell, either in one parcel or in subdivisions, as the said *administratrix* shall judge most beneficial to said estate, the real estate belonging to said estate hereinafter described, at *public auction [at private sale]*, to the highest bidder, upon the following terms, to wit: *for cash, gold coin of the United States* [or on credit not exceeding one year, or on credit to be paid in installments].

And it is further ordered, that, before making such sale, the said *administratrix* execute an additional bond to the State of *California*, with two or more sufficient sureties, in the penal sum of *five thousand dollars*, conditioned that the said *administratrix* shall faithfully execute the duties of the trust according to law.

The following is the real estate hereby authorized to be sold, being situate in the said *City and County of San Francisco, State of California*, and bounded and described as follows, to wit:

[Description.]

NOTE 1.—In California the order describes the lands and the terms, for cash or on a credit, not exceeding one year, payable in gross or in installments, and in such kind of money, with interest, as the Court may direct. It may be sold in one parcel or in subdivisions, as the executor or administrator shall judge most beneficial to the estate, unless the Court otherwise specially directs. If any part of such real estate has been devised, and not charged in such devise with the payment of debts or legacies, the Court must order the remainder to be sold before that so devised. Every such sale must be ordered to be made at public auction, unless, in the opinion of the Court, it would benefit the estate to sell the whole or some part of it at private sale; the Court may, if the same is asked for in the petition, order or direct such real estate, or any part, to be sold at either public or private sale, as the executor or administrator shall judge to be the most beneficial for the estate. [If the executor or administrator neglects or refuses to make a sale under the order, and as directed therein, he may be compelled to sell by order of the Court made on motion, after due notice, by any party interested.] C. C. P., sec. 1544.

NOTE 2.—In Nevada the same as in California. Gen. Stats., sec. 2332.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 2512.

NOTE 4.—In Montana the same. C. C. P., sec. 2673.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4166.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5329.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 22, p. 279.

NOTE 8.—In Washington the same as in California, except credit not over three years. Stats. 1893, sec. 3, p. 85.

NOTE 9.—In Oregon the executor or administrator shall sell the property specified in the order upon the terms therein directed, and in the manner provided. Such sale is made in the same manner as like property is sold on execution; provided, however, that the judge may, if thought best, order said property to be sold on the premises. The sale may also be made at private sale. Notice shall be given of the sale by publication for four weeks. Stats. 1893, p. 96, amending Hill's Laws, sec. 1150.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1153.

NOTE 11.—In Colorado the order specifies the part to be sold, for cash or on credit; the length of credit and the interest to be paid. If on credit a mortgage must be taken. The Court may prescribe the notice to be given, but it must not be less than twenty days; it may be either at public auction or at private sale in the Court's discretion. No sale can be made before the inventory is returned and filed. It must also bring the appraised value. Mills' Stats., secs. 4761-4766.

**No. 1069.—Order Fixing Day of Hearing Return of Sale of Real Estate.**

[TITLE OF COURT AND ESTATE.]

*Mary Jones, the administratrix of the estate of Thomas Jones, deceased, having this day made a return to this Court of her proceedings under the order of sale of real estate made by this Court, on the seventh day of December, 1895, and filed the said return in the office of the Clerk of this Court:*

It is ordered and directed that *Monday, the eighteenth day of January, 1895, at 10 o'clock A. M., at the courtroom of this Court, be, and the same is hereby, fixed for the hearing upon said return, and that notice of at least ten days be given thereof, by the Clerk, by posting notice thereof, according to law [or by publication, if ordered].*

Signed by \_\_\_\_\_, Judge.

NOTE 1.—In California a hearing upon the return of the proceedings may be asked for in the return, or by petition subsequently, and thereupon the clerk fixes the day for the hearing, of which notice of at least ten days is given by the clerk, by notices posted in three public places in the county, or by publication in a newspaper, and must briefly indicate the land sold, the sum for which it was sold, and must refer to the return for further particulars. C. C. P., sec. 1552.

NOTE 2.—In Nevada the same as in California. Gen. Stats., sec. 2338. The Clerk even prescribes the time of notice. See Stats. 1887, sec. 2, p. 32.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 5520.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2635.

NOTE 5.—In Utah the same as in California, but the return must be made within thirty days of the sale. Comp. Laws, sec. 4173.

NOTE 6.—In North and South Dakota the same as in Montana. Comp. Laws, sec. 5836.

NOTE 7.—In Wyoming the same as in California, except the return must be made before the next term of Court. Stats. 1890-91, sec. 27, p. 280.

NOTE 8.—In Washington, as to real estate sales at auction, the same as in California, except by the Court ordering the notice instead of the Clerk giving it. Hill's Stats., sec. 1180.

As to private sales of real estate, the same as in California, except any interested party may ask for a hearing upon the return. Stats. 1893, sec. 7, p. 87.

NOTE 9.—In Oregon, at the term next following the sale, the executor or administrator makes a return of his proceedings. Then person cited to appear on the application for the order of sale may file his objections to the confirmation. Hill's Laws, sec. 1151, p. 731.

Upon the hearing the Court confirms the sale, unless it appears that there were irregularities in the sale, or that the sum bidden is disproportionate to the value, and that a sum exceeding such bid at least ten per centum, exclusive of the expenses of a new sale, may be obtained therefor, in either of which cases the Court shall make an order vacating the sale, and directing that the property be resold. In case no objections are made to the confirmation of the sale the Court nevertheless examines the proceedings concerning such sale, and may make the order of resale in the same manner and with like effect as if objections had been filed. Id., sec. 1152, p. 731.

NOTE 10.—In Oregon the same as in Montana. Rev. Stats., sec. 1160.

NOTE 11.—In Colorado, at the term of the Court held for probate business next following the sale, the report is filed in Court, and, if the Court approves the sale, conveyance is ordered. Notice is not given, except such as the words "file return" implies. Stats. 1891, sec. 3, p. 406, and Mills' Stats., sec. 4769.

**No. 1070.—Order Confirming Sale of Real Estate.**

[TITLE OF COURT AND ESTATE.]

*Mary Jones, the administratrix of the estate of Thomas Jones, deceased, having made to this Court, and filed in the office of the Clerk thereof, a return of her proceedings under the order of sale*



herein, and said matter, coming on regularly this day to be heard, and it *having been proved* to the Court that in pursuance of said order of sale, and as ordered by the Court, *the Clerk of this Court* caused notice of the time and place of holding said sale to be posted up in three of the most public places in the *City and County of San Francisco*, in which the land ordered to be sold is situated, and to be published in the *Daily Evening Bulletin*, a newspaper printed and published in the same *City and County*, for *three weeks successively next before such sale*, in which order of sale and notice the lands and tenements to be sold were described with common certainty, as follows, to wit:

[Description.]

That at such sale *Stephen Wright* became the purchaser of said real estate for the sum of \$3,100, *he* being the highest and best bidder, and said *sum* being the highest and best *sum* bid.

And all and singular the law and the premises being by the Court here seen, heard, understood, and fully considered, wherefore it is by the Court ordered, adjudged, and decreed, that the said sale be, and the same is hereby, confirmed and approved; and the proper and legal conveyances of all said real estate are hereby directed to be executed to said purchaser by said *administratrix*.

(Signed by Judge.)

NOTE 1.—In California, if it appears that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property, and that a greater sum, as above specified, cannot be obtained, or if an increase of ten per cent be made and accepted, the court must make an order confirming the sale, and directing conveyances to be executed. The sale, from that time, is confirmed and valid, and a certified copy of the order confirming it and directing conveyances to be executed must be recorded in the office of the Recorder of the County within which the land sold is situated. C. C. P., sec. 1534.

NOTE 2.—In Nevada the order of sale is also recorded. In other respects the same as in California.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 5522.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2687.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 4175.

NOTE 6.—In North and South Dakota the same as in California. Comp. Laws, sec. 5835.

NOTE 7.—In Wyoming the same as in California, except recording order not necessary. Stats. 1890-91, sec. 290, p. 280.

NOTE 8.—In Washington the same as in California, as to sales at public auction. Hill's Stats. sec. 1182. And as to private sales the same. Stats. 1893, sec. 9, p. 87.

NOTE 9.—In Oregon, see note 9 to the form immediately preceding this.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1162.

NOTE 11.—In Colorado, see note 11 to form immediately preceding.

## No. 1071.—Order Appointing Guardian.

[TITLE OF COURT AND ESTATE.]

The petition of *Mary Jones*, for the appointment of *herself* as the guardian of the *person and estate* of said minors, coming on regularly to be heard on this *tenth day of December, 1895*, upon due proof to the satisfaction of said Court that due notice had been given to the relatives of the said minors residing in this *City and County*, and to the person under whose care said minors are,



as required by law, and as directed by this Court, and it duly appearing to the Court that said minors are residents of the *City and County of San Francisco*, and that *they* have estates within the *City and County of San Francisco*, which need the care and attention of some fit and proper person, and which estate is of the value of *ten thousand* dollars:

It is hereby ordered, that said *Mary Jones* be, and she is hereby, appointed guardian of the *persons and estates* of said minors, *William Jones, Charlotte Jones, and Emma Jones*, and that Letters of Guardianship of the persons and estates of said minors be issued to her upon her giving bond to *each* of said minors in the penal sum of *ten thousand* dollars.

Signed by

, Judge.

See No. 1041. Letters of Guardianship.

### No. 1072.—Order Directing Notice of Application for Appointment of Guardian.

[TITLE OF COURT AND ESTATE.]

*Mary Jones*, the mother of *William Jones, Charlotte Jones, and Emma Jones*, minors, children of *Thomas Jones*, late of the *City and County of San Francisco*, deceased, having this day made application by petition to the Superior Court of this *City and County* for the appointment of said *Mary Jones* as the guardian of the persons and estates of said minors:

It is hereby ordered and directed that personal notice of said application be served on *Frederick Wallace and Hiram Wallace* [*if the person under whose care the minors are be not the applicant for letters, then add the name of such person*], by citation, at least *five* days before the *tenth* day of *December, 1895*, requiring said parties to appear before said Court, at the courtroom, at the *City Hall*, in said *City and County*, on said *tenth* day of *December, 1895*, at *eleven o'clock A. M.*, then and there to show cause, if any they have, why the said *Mary Jones* should not be appointed the guardian of the persons and estates of the said minors, *William Jones, Charlotte Jones, and Emma Jones*.

Signed by

, Judge.

See No. 1041. Letters of Guardianship.

### No. 1073.—Order Authorizing Guardian to Sell Real Estate.

[TITLE OF COURT AND ESTATE.]

The petition of *Mary Jones*, the guardian of the persons and estate of the above-named minors for authority to sell certain land, coming on regularly to be heard the *fourteenth* day of *February, 1895*, and the Court having fully heard and examined the proofs and allegations of said petitioner, and all and singular the

law and the premises been by the Court here understood and duly considered:

Wherefore, it is ordered, adjudged, and decreed, that said *Mary Jones*, the guardian of the *persons and estates* of *William Jones*, *Charlotte Jones*, and *Emma Jones*, minors as aforesaid, do and she is hereby authorized, to sell all the right, title, and interest of her said wards, in and to the real estate hereinafter described, at public auction, upon the following terms, to wit: for cash, gold coin of the United States, and for the following causes or reasons: That the income of said estate is not sufficient to maintain and educate said wards, and it would also be for the benefit of said wards that their real estate should be sold in order that the proceeds thereof may be put out at interest.

And it is further ordered, that the said guardian shall, before the said sale, give bond to the said wards in the penal sum of fifteen hundred dollars, with sufficient security, to be approved by said Court or Judge, with condition to sell the said real estate, and make return thereof in the manner prescribed by law for the sales of real estate by executors and administrators.

The following is the real estate hereby authorized to be sold, being situated in the City and County of *San Francisco*, State of *California*, and bounded and described as follows, to wit:

[Description.]

(Signed by Judge.)

See No. 1003. Bond of Guardian on Sale of Real Estate.

NOTE 1.—In California, if it appears necessary, or for the benefit of the ward, that his real estate, or some part thereof, should be sold, the Court may grant an order therefor, specifying therein the causes or reasons why the sale is necessary or beneficial, and may, if the same has been prayed for in the petition, order such sale to be made either at public or private sale. C. C. P., sec. 1787, and the same as in sales by executors.

NOTE 2.—In Nevada the same as in California and as in sales by executors. Gen. Stats., sec. 578.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5807.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 3010.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4341.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 6019.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 11, p. 112.

NOTE 8.—In Washington such sales are conducted the same as by administrators. Hill's Stats., sec. 1146. See, also, Stats. 1893, p. 85.

NOTE 9.—In Oregon such sales may be had if the County Court having jurisdiction certify "in writing" its approbation of the proposed sale. In short, in plain English, if the Judge of the Court makes an order of sale. Hill's Laws, sec. 3121, vol. 1, p. 1391.

NOTE 10.—In Colorado see sales by executors and administrators.

NOTE 11.—In Arizona the same as in California. Rev. Stats., sec. 1360.

## No. 1074.—Order to Show Cause—Application to Mortgage.

[TITLE OF COURT AND ESTATE.]

*Mary Dix*, as the administratrix of the estate of *Casper Dix*, deceased, having filed herein her duly verified petition praying for an order of this Court authorizing and directing her to borrow the sum of *ten thousand* dollars, or such lesser sum as the Court

may deem necessary wherewith to pay the debts of said estate, and for the purpose of securing the payment of such loan, to mortgage to the lender of such money that certain real property of said estate situate in said *City and County of San Francisco, State of California*.

[Description.]

It is ordered that all persons interested in said estate appear before this Court, at its courtroom [Department No. 10], in said *City and County*, on the *fifth day of November, 1894, at 10 o'clock A. M.*, and then and there show cause why the said prayer of said petition should not be granted and the real property above described mortgaged to secure a loan to said estate of *ten thousand* dollars, or such lesser amount as the Court may deem meet, wherewith to pay the debts of said estate.

For all further particulars of said petition you are hereby referred to the petition now on file herein.

Signed, *etc.*

See No. 1106. Petition to Mortgage.

NOTE 1.—In California, upon filing the petition [see *Petition for Order*], an order shall be made by the Court or Judge, requiring all persons interested in the estate to appear before the Court or Judge, at a time and place specified, not less than four nor more than ten weeks thereafter, then and there to show cause why the realty (briefly indicating it), or some part thereof, should not be mortgaged (for) the amount mentioned in the petition, stating such amount, or such lesser amount as to the Court or Judge shall seem meet, and referring to the petition on file for further particulars.

The order to show cause may be personally served on the persons interested in the estate at least ten days before the time appointed for hearing the petition, or it may be published for four successive weeks in a newspaper of general circulation published in the county. C. C. P., part of sec. 1578.

NOTE 2.—In South Dakota the same to be heard not less than four and not more than ten weeks from the time of filing the petition. The order must be published in a county newspaper once a week for three weeks. Stats. 1890, pp. 267, 268.

NOTE 3.—In Wyoming a copy of the petition must be served personally on the minor (if any) at least ten days prior to the time set for hearing. The Court may also direct a reference to ascertain if it is necessary to make the order prayed for. Rev. Stats., sec. 5260, § 61.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2721.

NOTE 5.—In Washington there is no provision for notice. See Act of 1893, p. 2389.

NOTE 6.—In Colorado the proceedings are the same as on petition to sell real estate. Mills' Stats., secs. 4750–4756. See *Petition to Sell Real Estate*.

## No. 1075.—Order to Mortgage.

[TITLE OF COURT AND ESTATE.]

*Mary Dix, the administratrix of the estate of Casper Dix, deceased*, having petitioned this Court for an order empowering her as such *administratrix*, to mortgage the land and improvements described in said petition for the benefit of said estate, and said matter coming on this day to be heard, and satisfactory proof having been made of personal service of the order to show cause why this order should not be made on all persons interested in said estate, and no objections having been made to the making of this order; and proof having been made to the Court's satisfaction that it is for the best interests of said estate to make this order:

It is therefore ordered that the said *administratrix* execute in the name of and for the benefit of said estate, a mortgage of all



the land and improvements described in said petition to any person, firm, or corporation who will lend said estate \$10,000 in gold coin of the United States, payable two years after the *date of this order* with interest at the rate of not exceeding *seven per cent per annum* payable *semi-annually*.

The land and improvements ordered mortgaged are situated in the City and County of San Francisco and bounded and described as follows, to wit:

[Description.]

Signed, *etc.*

#### No. 1076.—Order to Mortgage, Clause "A."

It is therefore ordered . . . . [as in No. 1075] payable two years from the *first day of May, 1895*, or at any time *one year after the date of said mortgage*, with interest at the rate of *not over seven per cent per annum* payable on the first day of each month, [not in advance] commencing June 1, 1895. It is also ordered that the whole of said principal [or a part, as the case may be] and all the interest be paid from time to time out of any money belonging to said estate in the possession of said administratrix no matter from what source derived.

[Conclude as before.]

#### No. 1077.—Order to Mortgage, Clause "B."

It is therefore ordered [as in No. 1075.] That any buildings on the premises hereinafter described [or *in said petition described*, or *in this order described*] be, by said *administratrix*, insured at the prevailing rates of good insurance for the sum of \$3,000 payable to said estate, for the further security of the lender of said \$10,000, and the premium on said insurance paid by said administratrix from the income of said estate.

[Conclude as before.]

NOTE 1.—In California at the time and at the place appointed in the order to show cause, or at such other time and place to which the hearing may be postponed (the power to make all needful postponements being hereby vested in the Court or Judge), having first received satisfactory proof of personal service, or publication of the order to show cause, the Court or Judge must proceed to hear the petition, and any objections that may be filed or presented thereto. Upon such hearing witnesses may be compelled to attend and testify in the same manner and with like effect as in other cases; and if, after a full hearing, the Court or Judge is satisfied that it will be for the advantage of the estate to mortgage the whole or any portion of the real estate, an order must be made authorizing, empowering, and directing the executor or administrator, or the guardian of such minor or incompetent person, to make such mortgage. The order may direct that a lesser amount than that named in the petition be borrowed, and may prescribe the maximum rate of interest and period of the loan, and require that the interest, and the whole or any part of the principal, be paid, from time to time, out of the whole estate, or any part thereof, and that any buildings on the premises to be mortgaged shall be insured for further security of the lender, and the premiums paid from such income. C. C. P., part of sec. 1578. [See Petition.]

NOTE 2.—See notes to No. 1106.

Petition to Mortgage. Order to Show Cause. Mortgage by Court's Order. See also Note "A" to Mortgage by Court's Order as to avoidance of other covenants than those expressly authorized by statute.

**No. 1078.—Order Appointing Day for Settlement of Account, and Directing Notice to be Given.**

[TITLE OF COURT AND ESTATE.]

*Mary Jones, the administratrix of the estate of Thomas Jones, deceased, having this day rendered and presented for settlement, and filed in this Court her first annual account of her administration of estate of said deceased:*

It is ordered, that *Monday, the twenty-seventh day of June, 1895, at 11 o'clock A. M.*, be, and the same is hereby, appointed for the settlement of the said account; and that the Clerk give notice thereof by causing notices to be posted in at least three public places in this *City and County*, at least ten days before said day of settlement, according to law.

Signed by \_\_\_\_\_, Judge.

See notes to Form No. 1049. Notice of Settlement of Account.

**No. 1079.—Order Appointing Referee of Annual Account and Adjourning Settlement.**

[TITLE OF COURT AND ESTATE.]

*Mary Jones, the administratrix of the estate of Thomas Jones, deceased, having, on the sixteenth day of June, 1895, rendered her annual account of settlement, and notice of such settlement having been duly given for this day, as ordered by this Court [if the guardian ad litem, or any person interested in the estate, has filed exceptions to the account, state that fact here, thus: And John F. French, Esq., appointed by this Court to represent William Jones, Charlotte Jones, and Emma Jones, minors interested in the said estate, upon the settlement of said account—or, the party opposing—having appeared and filed exceptions thereto]:*

It is hereby ordered, that *George B. Merrill, Esq.*, be, and he is hereby, appointed a referee to examine the said account and make report thereon to this Court within *two weeks*, and that the settlement of said account be adjourned until *Monday, the eleventh day of July, 1895, at eleven o'clock A. M.*

Signed by \_\_\_\_\_, Judge.

NOTE 1.—In California all matters, including allowed claims not passed upon on the settlement of any former account, or on rendering an exhibit, or on making a decree of sale, may be contested by the heirs, for cause shown. The hearing and allegations of the respective parties may be postponed from time to time, when necessary, and the Court may appoint one or more referees to examine the accounts and make report thereon, subject to confirmation; and may allow a reasonable compensation to the referees, to be paid out of the estate of the decedent. C. C. P., sec. 1633.

NOTE 2.—In Nevada the same. Gen. Stats., part of secs. 2904 and 2905.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5601.

NOTE 4.—In Montana the same. C. C. P., sec. 2794.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4240.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5903.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 19, p. 290.

NOTE 8.—In Washington, when the account is rendered for settlement notice is given [See Account and Notice of given by Clerk], and the matters come on the hearing may be adjourned the same as in California. Hill's Stats., secs. 1869-1872.

The Court may also appoint a referee to examine the account under its general powers. Id., sec. 382, sub. 2.

NOTE 9.—In Oregon all such matters are investigated by Courts under their general powers. See secs. 1077, 1078, Hill's Laws, p. 705, and as to referees, Id., sec. 222, p. 310, sub. 2.

NOTE 10.—In Arizona the same as in California. Gen. Stats., sec. 1227.

NOTE 11.—In Colorado the same as in Oregon as to referees. Code of Procedure, secs. 204, sub. 2. And as to accounts generally. Mills' Stats., sec. 4804.

## No. 1080.—Order to Show Cause why Decree of Distribution Should Not be Made.

[TITLE OF COURT AND ESTATE.]

On reading and filing the petition of *Mary Jones, the administratrix of the estate of Thomas Jones, deceased*, praying for an order of distribution of the residue of said estate among the persons entitled:

It is ordered that all persons interested in the estate of the said *Thomas Jones, deceased*, be and appear before the Superior Court of the *City and County of San Francisco*, at the courtroom of said Court, in the *City Hall* in said *City and County*, on *Monday, the nineteenth day of September, 1895*, at 11 o'clock A. M., then and there to show cause why an order of distribution should not be made of the residue of said estate among the heirs of the said deceased, according to law.

It is further ordered, that a copy of this order be published *once a week* for four successive weeks, before the said *nineteenth day of September, 1895*, in the *Daily Morning Call*, a newspaper printed and published in the said *City and County*.

Signed by \_\_\_\_\_, Judge.

NOTE 1.—In California order or decree is made on the petition of the executor or administrator, or of any person interested in the estate. Notice of the application must be given by posting or publication, as the Court may direct, and for such time as may be ordered. If partition be applied for, as provided in this chapter, the decree of distribution shall not divest the Court of jurisdiction to order partition, unless the estate is finally closed. C. C. P., sec. 1668.

NOTE 2.—In Nevada the same, except the notice is given in the same manner as on petition for order of sale of real estate. Gen. Stats., sec. 2929. See Petition to Sell Real Estate and Notice of Application to Sell.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 5629.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2846.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4264.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5923.

NOTE 7.—In all other places. See Petition for Distribution and Decree of Distribution.

## No. 1081.—Order Appointing Special Administrator.

[TITLE OF COURT AND ESTATE.]

It is ordered that *John Wilson* be and he is appointed special administrator of the estate of *Henry Wiggins, deceased*, to collect and take charge of the estate of said decedent, in whatever county or counties the same may be found; and to exercise such other powers as may be necessary for the preservation of the estate; and that special letters of administration of the estate of said dece-



dent issue to said *John Wilson*, upon his giving a bond in the sum of *ten thousand* dollars.

Signed by \_\_\_\_\_, Judge.  
See notes to No. 1040. Letters of Administration—Special.

### No. 1082.—Order Appointing Special Administrator.

[TITLE OF COURT AND ESTATE.]

On reading and filing the petition of *John Brown*, a resident of Spokane, State of *Washington*, praying for the issuance to him of special letters of administration upon the estate of *Samuel Brown*, deceased, it appearing to this Court, from the said petition and from the proofs offered upon said application, and this Court so finds that the said *Samuel Brown* died intestate in the said City of Spokane, on the *fifth* day of *May*, 1895; that he was a resident of said city at the time of his death; that the said deceased left estate in said city, and that there will be delay in the obtaining of general letters of administration. It is therefore ordered that the said *John Brown* be, and he is hereby, appointed special administrator of the estate of *Samuel Brown*, deceased, with full power and authority to collect and take charge of the estate of the said decedent in whatever county or counties the same may be found, and to exercise such other power as may be necessary for the preservation of the said estate.

(Signed and dated.)

Judge.

See notes to Minute Order, No. 1083.

### No. 1083.—Minute Order—Appointment of Special Administrator.

[TO BE BY THE CLERK ENTERED UPON THE COURT'S MINUTES.]

Application having been made for the appointment of a special administrator to take charge of the estate of *John Brown*, deceased, until the qualification of an administrator of the estate of said deceased, or until the further orders of this Court: It is ordered that *Samuel Brown, Esq.*, be, and he is hereby, appointed special administrator of the estate of said deceased to collect and take charge of the estate of said deceased in whatever county the same may be found, and to exercise such other powers as may be necessary for the preservation of the estate of said deceased [or the order may be that the public administrator take charge of the estate].

Dated, etc.

See No. 1082.

NOTE 1.—In California the appointment may be made at any time, and without notice, and must be made by entry upon the minutes of the Court, specifying the powers to be exercised by the administrator. Upon such order being entered, and after the person appointed has given bond, the Clerk must issue letters of administration to such person, in conformity with the order. C. C. P., sec. 1412.

NOTE 2.—In Nevada the same as in California. Gen. Stats., sec. 2758.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5390.

NOTE 4.—In Montana the same. C. C. P., sec. 2501.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4076.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5745.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 2, p. 259.

NOTE 8.—In Arizona the same. Rev. Stats., sec. 1056.

NOTE 9.—In Washington, Oregon, and Colorado see Letters of Administration—Special.

### No. 1084.—Order Appointing Commissioner.

[TITLE OF COURT AND ESTATE.]

THE PEOPLE OF THE STATE OF CALIFORNIA, to *John Brown*:

Know ye, that, trusting to your fidelity and circumspection, we have appointed you special commissioner, and do hereby authorize you to administer the necessary oaths, and take the depositions of *Henry Jones*, residing at *Rochester, Genesee County, State of New York*, or either of them, in answer to the interrogatories, direct and cross, annexed hereto, in the matter of the estate of *Daniel Burns, Esq., deceased*.

All of which matter, together with this writ, you will return to this Court, according to law, in a sealed envelope, directed to the Clerk of said Superior Court, at the City of San Francisco, State of California, and forward the same, by mail or express, or other usual channel of conveyance.

Witness: Hon., etc.

### No. 1085.—Order to Show Cause on Application of Guardian for Order of Sale of Real Estate.

[TITLE OF COURT AND ESTATE.]

It appearing to this Court from the petition this day presented and filed by *Mary Jones*, the guardian of the persons and estate of *William Jones, Charlotte Jones, and Emma Jones*, minors, praying for an order of sale of certain real estate belonging to said wards, and that it is for the best interests of said wards, and necessary that such real estate should be sold:

It is hereby ordered that the next of kin of the said wards, and all persons interested in the said estate, appear before this Court on *Tuesday, the fourteenth day of February, 1895, at 10 o'clock A. M.*, at the courtroom of this Court, at the New City Hall, in the City and County of San Francisco, then and there to show cause why an order should not be granted for the sale of such estate.

And it is further ordered that a copy of this order be published at least once a week for three successive weeks before the said day of hearing, in the *Daily Evening Bulletin*, a newspaper printed and published in said City and County of San Francisco.

Signed by

Judge.

**NOTE 1.**—In California, if it appear from the petition, that it is necessary or would be beneficial to the ward that the real estate, or some part of it, should be sold, or that the real and personal estate should be sold, the Court must thereupon make an order directing the next of kin of the ward, and all persons interested in the estate, to appear before the Court, at a time and place therein specified, not less than four nor more than eight weeks from the time of making such order, to show cause why an order should not be granted for the sale of such estate. [If it appear that it is necessary or would be beneficial to the ward, to sell the personal estate or some part of it, the Court must order the sale to be made]. C. C. P., sec. 1782.

**NOTE 2.**—In Nevada the same to the brackets, and then if it appear necessary, or would be beneficial, to sell the personal estate, or some part of it, the same proceedings are had in reference to notice of the application, and to ordering a sale, and making such sales as are provided in relation to sales of personal estate by executors or administrators. Gen. Stats., sec. 573.

**NOTE 3.**—In Idaho the same as in California. Rev. Stats., sec. 5802.

**NOTE 4.**—In Montana the same as in California. C. C. P., sec. 3005.

**NOTE 5.**—In Utah the same as in California, after ten weeks' notice. Comp. Laws, sec. 4336.

**NOTE 6.**—In North and South Dakota the same as in California. Comp. Laws, sec. 6014.

**NOTE 7.**—In Wyoming the same as in California. Stats. 1890, p. 311, sec. 6.

**NOTE 8.**—In Washington the same proceedings are had as on sales by administrators. Hill's Stats., sec. 1006. See Order to Show Cause—Administrator's Petition.

**NOTE 9.**—In Oregon and Colorado. See Order to Show Cause Given on Administrator's Application.

**NOTE 10.**—In Arizona the same as in California. Rev. Stats., sec. 1355.

## No. 1086.—Order to Give Further Security.

[TITLE OF COURT AND ESTATE.]

In this matter it is ordered that the prayer of the petition of *Henry Smith* be granted to the extent that *Samuel Brown*, the administrator of the estate of *Henry S. Williams*, deceased, within ten days from the date of this order, file a new bond as administrator of said estate in the sum of *ten thousand dollars*. Said bond to be submitted to me for approval on or before ten days from date.

(Dated and signed.)

**NOTE 1.**—In California, if it appears that the security is, from any cause, insufficient the Court may make an order requiring the executor or administrator to give further security, or to file a new bond in the usual form within a reasonable time, not less than five days. C. C. P., sec. 1399.

**NOTE 2.**—In Nevada the same to be filed *within five days*. Gen. Stats., sec. 2742.

**NOTE 3.**—In Idaho the same as in California. Rev. Stats., sec. 5382.

**NOTE 4.**—In Montana the same as in California. C. C. P., sec. 2432.

**NOTE 5.**—In Utah the same as in California. Comp. Laws, sec. 4066.

**NOTE 6.**—In North and South Dakota the same as in California. Comp. Laws, sec. 5736.

**NOTE 7.**—In Wyoming the same as in California. Stats., 1890-91 sec. 12, p. 258.

**NOTE 8.**—In Washington the same as in California. Hill's Stats., sec. 918.

**NOTE 9.**—In Oregon the time to file the bond is absolutely limited to *five days* as in Nevada from the date of the order, and if he fails then his letters are *deemed* revoked [without further order] unless the Court extends the time to comply with the order. Hill's Laws, sec. 1077, p. 713.

**NOTE 10.**—In Arizona the same as in California. Rev. Stats., sec. 1046.

**NOTE 11.**—In Colorado the same in meaning. Mills' Stats., secs. 2721-4727.

## No. 1087.—Order Revoking Letters.

[TITLE OF COURT AND ESTATE.]

*Samuel Brown*, the administrator of the estate of *Henry S. Williams*, deceased, having neglected to file a new bond within



the time ordered by this Court, it is hereby ordered that the letters of *administration* in said estate heretofore granted to the said *Samuel Brown* be, and the same are hereby, revoked.

(Dated and signed.)

NOTE A.—For references see Form No. 1086 next preceding, and the references in the notes and the sections next following the ones cited in said notes.

### No. 1088.—Order that Executor has Forfeited His Right.

[TITLE OF COURT AND ESTATE.]

*John Smith*, the person named by *Henry Smith* in his last will as *executor* thereof, having delayed for more than *thirty days* after the death of said *Henry Smith*, and without good cause for more than *thirty days* after he had knowledge of the death of said *Henry Smith*, having neglected to petition the Court having jurisdiction of said estate for letters testamentary on said estate, the said *John Smith* has renounced his right to said letters.

NOTE A.—This order may be made when another person [the public administrator] petitions for letters, with the will attached, and the ground of his application is the neglect stated in the order. It would be good form to insert the above in the order granting letters.

NOTE 1.—In California, if a person knows that he is named in a will as executor, and has knowledge of the death of the testator, and fails to petition for the probate of the will for thirty days after he has knowledge of said death, the Court may appoint some other person executor unless good cause for delay is shown. C. C. P., sec. 1301.

NOTE 2.—Nevada the same by inference. Gen. Stats., sec. 2672.

NOTE 3.—Idaho the same. Rev. Stats., sec. 5299.

NOTE 4.—In Montana the same. C. C. P., sec. 2323.

NOTE 5.—Utah the same. Comp. Laws, sec. 3993.

NOTE 6.—North and South Dakota the same. Comp. Laws, sec. 5662.

NOTE 7.—Wyoming the same. Stats. 1890-91, sec. 6, p. 246.

NOTE 8.—In Washington, Oregon, and Colorado the same under the general law leaving all such matters to the judgment of the Court.

NOTE 9.—In Arizona the same as in California. Gen. Stats., sec. 971.

### No. 1089.—Order to Produce Will.

[TITLE OF COURT AND ESTATE.]

It appearing that *John Brown* has in his possession a will executed by *James G. Fair*. It is ordered that he, the said *John Brown* produce the same in this Court on *Monday, May 12, 1895*, or show cause then and there why he should not produce it.

Dated, *etc.*

NOTE 1.—In California, if the petition alleges that a will is in the possession of a person not joining in the petition, an order will be made directing him to produce it at a time stated in the order. C. C. P., sec. 1302.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2676.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5300.

NOTE 4.—In Montana the same. C. C. P., sec. 2324.

NOTE 5.—In Utah the same. Comp. Laws, sec. 3994.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5663.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 7, p. 246.

NOTE 8.—In Washington the same. Hill's Stats., secs. 858-860.

NOTE 9.—In Oregon and Colorado the Courts will secure possession of wills under their general powers.

NOTE 10.—In Arizona the same as in California. Gen. Stats., sec. 972.

See Contempt.

**No. 1090.—Order Revoking Probate of Will.**

[TITLE OF COURT AND ESTATE.]

It is ordered that the order made *May 9, 1895*, admitting to probate a document purporting to be the last will of *Henry M. Fair*, deceased, be and the same is hereby annulled and revoked.  
Dated, *etc.*

NOTE 1.—In California when a will is contested after probate, and the will held to be invalid an order is made annulling and revoking the order admitting it to probate: C. C. P., sec. 1330.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2700.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5321.

NOTE 4.—In Montana the same. C. C. P., sec. 2363.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4013.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5683.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 9, p. 249.

NOTE 8.—In Washington the same. Hill's Stats., sec. 876.

NOTE 9.—In Oregon it is set aside under the equity powers of the Court. Hill's Laws, secs. 1077, 1078, p. 705.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 993.

NOTE 11.—In Colorado the same as in Oregon. Mills' Stats., sec. 4679.

**No. 1091.—Order of Partial Distribution.**

[TITLE OF COURT AND ESTATE.]

This case coming on regularly for hearing this *tenth* day of *May, A. D. 1895*, before the Court, on the petition of *John Brown*, brother and heir of said deceased, and due proof to the satisfaction of the Court having been made of the service of the notice in such cases required, according to law, and no objection thereto having been made:

Now, then, it is hereby ordered, adjudged, and decreed, that distribution of said estate be made, and that *the administrator of said estate* do transfer, set over, and deliver unto the said *John Brown* the property and funds belonging to the said estate, remaining in his hands or under his control, after payment of the costs and expenses of administration on said estate, upon the execution and delivery to him of a bond of indemnity in the penal sum of *one thousand* dollars, payable to said *administrator*, with two sufficient sureties, to be approved by the Judge of this Court, conditioned that the said *John Brown* shall and will, whenever required, pay any (or his proportion of the) debt or debts, which may be found legally due to any person or persons, from the said estate, the said applicant to pay the costs of this proceeding.

Signed, *etc.*

See notes to No. 1112. Petition for Partial Distribution.

**No. 1092.—Order Whole of Estate Paid to Family.**

[TITLE OF COURT AND ESTATE.]

The petition of *Mary Sims*, widow of *Henry Sims*, said deceased, being presented to this Court, showing that there are *six* minor

children of deceased surviving him, to wit: [*naming them and giving ages*] who are without means of support; and it appearing, from the inventory returned by the appraisers of said deceased, that the value of the estate does not exceed *fifteen hundred dollars*:

It is hereby ordered and decreed, that after the payment of the expenses of his last sickness, funeral charges of said deceased, and of the expenses of administration, amounting, as appears by the account of the *administratrix* filed herein, to the sum of *three hundred dollars*, the whole of the estate being the amount of *one thousand four hundred dollars*, as shown by said inventory, be assigned for the use and support of said minor children, and that no further proceedings be had in this administration.

And it is further ordered, that the whole of said property so set apart, being the property and estate so set forth in the inventory filed herein, less the amount necessary to pay said expenses and charges, be and the same is hereby declared to be the property of said minor children *and the said widow*, the whole amount thereof is hereby decreed to be the property of said minor children and widow to be used for their support.

(Dated and signed.)

Judge of the Superior Court.

NOTE 1.—In California, when the value of the estate is not over one thousand five hundred dollars, and, if the deceased left a widow and minor children the Court, orders notice given to show cause why the whole estate should not be set over to said wife and children, the expenses of administration and of the deceased's last sickness being first paid. Notice of the application is given the same as upon the filing of an account. [See notice of same]. If there is no widow then said children take it all. If no children then the widow takes it. C. C. P., sec. 1469.

NOTE 2.—In Nevada substantially the same to the amount of five hundred dollars. Rev. Stats., sec. 2795.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 5445.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 1469.

NOTE 5.—In Utah the same as in California, with the words *absolutely and equally added*. Comp. Laws, sec. 4118.

NOTE 6.—In North and South Dakota the same as in California. Comp. Laws, sec. 5785.

NOTE 7.—In Wyoming the same as in California. Stats. 1890-91, sec. 6, p. 267.

NOTE 8.—In Washington the same to the extent of one thousand dollars. Hill's Stats., sec. 971.

NOTE 9.—In Oregon the same to the extent of one hundred and fifty dollars [all exempt property is set aside also]. Hill's Laws, sec. 1129, p. 723.

NOTE 10.—In Arizona the same to the extent of two thousand dollars. Rev. Stats., sec. 1093.

## No. 1093.—Order Approving Selection of Referee.

[TITLE OF COURT AND ESTATE.]

The administrator of said estate, and *John Brown*, who has presented a claim against said estate, having agreed that the matter of liability of said estate for said claim be referred to *Henry Smith* for investigation:

It is ordered that said matter be referred to the said *Henry Smith*, for investigation and report.

(Dated and signed.)

See notes to No. 1134. Reference of Claim.



**No. 1094.—Order on Executor, etc., to File Statement.**

[TITLE OF COURT AND ESTATE.]

It is ordered that the executor of this estate forthwith return and file a statement of all claims against this estate that have been presented to him up to and including the date said report is filed. Said claim to be in compliance with section 1512 of the Code of Civil Procedure of the State of California [sec. 2816 of Nevada, sec. 5482, Idaho; sec. 169, Montana; sec. 4142, Utah; sec. 5810 North and South Dakota; sec. 996, Washington, and sec. 1129, Arizona.]

See No. 1130, Statement of Claims Presented.

**No. 1095.—Order Vacating Sale of Real Estate.**

[TITLE OF COURT AND ESTATE.]

It is ordered that the sale of real estate reported and returned to this Court in the matter of said estate, on May 5, 1895, be, and it is hereby, vacated, and it is ordered that, etc. [*proceed and finish as if no sale had been made, and as if this were the original order of sale*].

See notes to No. 1125. Return of Sale of Real Estate.

**No. 1096.—Order Vacating Sale of Real Estate, etc.**

[TITLE OF COURT AND ESTATE.]

The return of the proceedings on sale of real estate in the matter of this estate coming on to be heard this day; and it appearing to the Court that the sum bid at the sale returned as aforesaid was disproportionate to the value of the property offered for sale; and it appearing that a sum exceeding the sum bid and reported at least ten per cent, exclusive of the expenses of a new sale, can be obtained; it is ordered that said sale be, and it is hereby, vacated, and it is ordered, etc. [*proceed and finish the same as in the order of sale following which the prior sale was made.*]

See notes to No. 1125. Return of Sale of Real Estate.

**No. 1097.—Offer to Increase Bid for Real Estate.**

[TITLE OF COURT AND ESTATE.]

To the Honorable the Judge of the Probate Court in and for the County of *Blank*, State of *North Dakota*:

The undersigned offers to pay \$10,375 for the land described in the report and return of proceeding on sale of real estate filed in the matter of said estate on May 5, 1895, viz: Amount bid at reported sale \$9,000. This bid \$10,375.

(Signed)

See notes to No. 1125. Return of Sale of Real Estate.

**No. 1098.—Petition for Probate of Will.**

[TITLE OF COURT AND ESTATE.]

To the Hon. the Superior Court of the County of Sacramento,  
State of California:

The petition of *Timothy Markham and Gordon Bennett*, of the County of Sacramento, State of California, respectfully shows:

That *Paul Clifford* died on or about the *eleventh* day of April, one thousand eight hundred and *eighty-one*, at the County of Sacramento.

That said deceased, at the time of his death, was a resident of the County of Sacramento, in said State of California, and left estate therein and in San Francisco, consisting of real and personal property.

That the probable value and character of the said property are as follows, to wit: The real estate consists of a lot of land in the City and County of San Francisco, of the value of fifty thousand dollars, or thereabouts, and of four lots in the City of Sacramento, of the value of twenty-five thousand dollars or thereabouts. One of said lots in Sacramento was the residence and homestead of said *Paul Clifford* at the time of his death. All of said real estate is improved, and yields rents and income of one thousand dollars per month. The personal property consists of his stock in trade, of the value of twenty thousand dollars or thereabouts, and of household furniture, of the value of ten thousand dollars or thereabouts. The lot of land in San Francisco is separate property, the same having been owned by him before marriage. All the other estate, both real and personal, is common property, the same having been acquired by him after his marriage.

That the total estate of said deceased does not exceed in value the sum of one hundred and twenty-five thousand dollars.

That said deceased left a will bearing date the *ninth* day of April, 1895, in the possession of his widow, *Jane Clifford*, which your petitioners believe and therefore allege to be the last will and testament of said deceased, and which is herewith presented to said Superior Court.

That your petitioners, *Timothy Markham and Gordon Bennett*, named in said will as executors thereof, consent to act as such; and *Jane Clifford*, aged about forty years, residing at said City of Sacramento, widow of said deceased; *Charles Clifford*, the son of said deceased, aged about eighteen years, and *Elizabeth Clifford*, the daughter of said deceased, aged about sixteen years, residing also at said City of Sacramento, are named therein as devisees.

[Or, the said will was entirely written, signed, and dated by said testator.]

That the subscribing witnesses to said will are *Moses King*, residing in the said City of Sacramento, and *Homer Willard*, also residing in the said City of Sacramento.

That the next of kin of said testator, whom your petitioners

are advised and believe, and therefore allege to be the heirs at law of said testator; and the names, ages, and residences of said heirs are his said *surviving wife, Jane Clifford*, aged about forty years, residing at said *City of Sacramento*, and his said *children, Charles Clifford*, aged about eighteen years, and *Elizabeth Clifford*, aged about sixteen years, residing at said *City of Sacramento*.

That at the time said will was executed, to wit, on the said *ninth day of April, 1895*, the said testator was over the age of eighteen years, to wit, of the age of *forty-five years* or thereabouts, and was of sound and disposing mind, and not acting under duress, menace, fraud, or undue influence, and was in every respect competent, by last will, to dispose of all his estate.

[*That said will is in writing, signed by the said testator, and attested by said subscribing witnesses, at the request of said testator, subscribing their names to the said will in the presence of the said testator, and in the presence of each other; and that, as your petitioners are advised, and therefore allege, said witnesses, at the time of attesting the execution of said will, were, and are now, competent.*]

Wherefore, your petitioners pray that the said will may be admitted to probate, and that letters testamentary be issued to your petitioners, and for that purpose a time for proving said will be appointed, and that all persons interested be notified and directed to appear at the time appointed for proving the same; and that all other necessary and proper orders may be made in the premises.

(Signed)

NOTE 1.—In California an executor, devisee, or any other person interested in the estate, may, at any time, petition the Court to have the will proved, whether the same be in writing, in his possession or not, or is lost or destroyed, or beyond the jurisdiction of the State, or a nuncupative will. C. C. P., sec. 1299.

Such petition must show: 1. The jurisdictional facts; 2. Whether the person named as executor consents to act, or renounces his right to letters. 3. The names, ages, and residence of the heirs and devisees, so far as known to the petitioner; 4. The probable value and character of the property; 5. The name of the person for whom letters are prayed. No defect of form, or in the statement of jurisdictional facts actually existing, voids the probate of a will. Id., sec. 1300.

NOTE 2.—In Nevada any person interested may present a petition praying that the will be produced and admitted to probate. Gen. Stats., sec. 2675.

If the executor intends to decline he must file his renunciation in writing. If he neglects for ten days to do so, such neglect shall be equivalent to renunciation, unless, for cause shown, the Probate Court or Judge, shall extend the time. If he intends to accept he must present with the will a petition setting forth the jurisdictional facts, and, when known, the names, ages, and residence of the heirs and devisees, and the probable value and character of the property, and praying that the will be admitted to probate, and that letters be issued to him. If the jurisdictional facts existed, but are not fully set forth in the petition, and the same shall be afterwards proved in the course of the administration, the probate of the will and the subsequent proceedings shall not, on account of such want of jurisdictional averments, be held void. Id. sec. 267.

NOTE 3.—In Idaho the same as in California. Rev. Stats., secs. 5297, 5298.

NOTE 4.—In Montana the same as in California. C. C. P., secs. 1321, 1322.

NOTE 5.—In Utah the same as in California. Comp. Laws, secs. 3991, 3992.

NOTE 6.—In North and South Dakota the same as in California. Comp. Laws, secs. 5660, 5661.

NOTE 7.—In Wyoming the same as in California. Stats. 1890-91, secs. 4, 5, p. 245.

NOTE 8.—In Washington, if the named executor declines he must file the will and his declination at the same time. If he accepts he presents with the will a petition pray-



ing that the will be admitted to probate, and that letters testamentary be issued to him. Hill's Stats., sec. 856.

He must present the will to the proper Court within thirty days *after he has knowledge that he is executor of the will is in his possession.* Id., sec. 855.

If strictly construed, the above means that it may happen that an executor will be obligated to present a will to the Court as soon as the testator presents it to him for safe-keeping and informs him of his trust.

NOTE 9.—In Oregon the petition must set forth the facts necessary to give the Court jurisdiction, and also state whether the deceased left a will or not, and the names, age, and residence, so far as known of his heirs, and of the deceased. Hill's Laws, sec. 1092, p. 712.

NOTE 10.—In Arizona the same as in California. Rev. Stats., secs. 969, 970.

NOTE 11.—In Colorado the possessor of a will must present it within ten days after he has notice of the maker's death. No petition is necessary. A citation issues to the widow and heirs to appear and show cause why the will should not be probated. Mills' Stats., secs. 4661-4666.

See Citation.

## No. 1099.—Petition for Probate of Will Not in Possession of Petitioner.

[TITLE OF COURT AND ESTATE.]

[Commence as in Petition to Probate Will, Form No. 1098, and then insert:]

That said deceased left a will bearing date the *ninth* day of *April, 1894*, which your petitioners believe and therefore allege to be the last will and testament of said deceased, and which will is, as petitioner is informed and believes, and therefore alleges, in the possession of *John Goodfellow*, and he, the said *John Goodfellow* has been requested to file said will in the Court having jurisdiction of this estate, but he has refused, and still does refuse, to either file said will or deliver the same to this petitioner, or any other person.

[Continue as in No. 1098 down to the last paragraph, and then conclude:]

Wherefore your petitioner prays for an order directing the said *John Goodfellow* to produce said will in this Court at a time named in said order; and your petitioners pray that the said will may be admitted to probate, and that letters testamentary be issued to your petitioner, and for that purpose a time for proving said will be appointed, and that all persons interested be notified and directed to appear at the time appointed for proving the same; and that all other necessary and proper orders may be made in the premises.

See No. 1098 and also notes to No. 1089, Order to Produce Will.

## No. 1100. Petition for Probate of Lost Will.

[TITLE OF COURT AND ESTATE.]

[Commence the same as in Petition for Probate of a Will Produced and Filed. Then allege:]

*That said will was in the words and figures following, to wit.* [Set out will in full.] *That said will was in the possession of deceased unrevoked at the time of his death. That he met death by*

burning on May 3, 1894, at the City of Boston, and said will was accidentally burned with his body.

Wherefore petitioner prays that said will may be admitted to probate as the last will of said deceased.

NOTE 1.—In California a lost or destroyed will may be established by proof, notice to all persons interested being first given as prescribed in regard to proofs of wills in other cases. All the testimony must be reduced to writing, and signed by the witnesses. C. C. P., sec. 1338.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2704.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5325.

NOTE 4.—In Montana the same. C. C. P., sec. 2370.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4017.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5637.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 1, p. 250.

NOTE 8.—In Washington the same. Hill's Stats., sec. 879.

NOTE 9.—In Oregon the same, under equity powers. Hill's Laws, secs. 1077, 1073, p. 705.

NOTE 10.—In Colorado the same. Mills' Stats., sec. 4672.

NOTE 11.—In Arizona the same as in California. Rev. Stats., sec. 997.

## No. 1101.—Petition for Letters—Nuncupative Will.

[TITLE OF COURT AND ESTATE.]

[Commence as in Petition for Probate of a Will, executed in the presence of subscribing witnesses, and follow down to the paragraph commencing as follows:]

That the total estate of deceased does not exceed in value the sum of one thousand dollars. That the circumstances surrounding the death of John Brown were as follows: Deceased and Henry Jones, and William Dore were on May twelfth 1895, passengers on the schooner Colima from San Francisco, California, to Acapulco, Mexico. On the passage a storm arose, and the said schooner fell on her beam ends, and, when the vessel fell over, deceased was thrown against the mainmast with such force that his right arm was broken, so that he was unable to swim, or resist death by drowning, and deceased became, thereby, in great fear and peril of death on account of the injury aforesaid. While in said peril deceased said to said Jones and Dore that he then and there greatly feared death, and he believed it would soon come to him, if not to others, and also said that he had in his own name on deposit in the Hibernia Savings Bank in San Francisco, California, nine hundred dollars, and in case of his death it was his wish that said \$1,000 be given to my old friend and attorney, Col. H. I. Kowalsky, of San Francisco, California, or such grandchildren as he, the said Col. H. I. Kowalsky, might discover to him, deceased, and he, the said John Brown at the time and place aforesaid asked the said Henry Jones and William Dore to bear witness that the words so spoken as aforesaid constituted his last will. Shortly after the said words were spoken a wave washed said John Brown into the ocean, and said witnesses saw him sink beneath the waves. That within thirty days from the death of said John Brown his testamentary words, as aforesaid, were reduced to writing, and the said writing is hereto

*attached and referred to and made part thereof and marked Exhibit "A."*

Conclude as is Petition for Probate of Will.

See notes to No. 317, Will, in part first.

### **No. 1102.—Petition for Order—Property Concealed, etc.**

[TITLE OF COURT AND ESTATE.]

The *executor* of the estate of *James G. Fair*, deceased, complains to this Court by this petition, and states:

That on *January 29, 1895*, petitioner filed in this Court a document purporting to be the last will of said deceased. That thereafter such proceedings were had that your petitioner was duly appointed executor under said will, and he is now the qualified and acting executor thereof. That since his said appointment and qualification as aforesaid petitioner has been informed and he believes that the will aforesaid was not the last will of said deceased. That the last will of said deceased was executed subsequent to the will probated as aforesaid, and your petitioner is informed and believes and therefore avers that the last will of said deceased is now in the possession of one *L. R. Lloyd*, a resident of said County. That petitioner has demanded said will of said *Lloyd*, but he, admitting that he has said will in his possession, refuses to deliver it to petitioner, or to file it in this or any other Court, though by petitioner requested so to do.

Wherefore, petitioner prays for an order citing said *Lloyd* before this Court to make answer under oath respecting said will, or [state the facts relating to any other cause of complaint permissible under the statutes referred to in the notes to this form].  
[Verified.] See Nos. 970, 971.

NOTE 1.—In California, if any person interested in the estate complains to the Superior Court, on oath, that a person is suspected to have concealed, embezzled, smuggled, conveyed away, or disposed of any moneys or goods of the decedent, or has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings which contain evidences of, or tend to disclose, the interest, or claim of the decedent to any estate, or any claim or demand, or any lost will, the said Court or Judge may cite such person to appear before such Court, and may examine him on oath upon the matter of such complaint. C. C. P., sec. 14.9.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2786.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5432.

NOTE 4.—In Montana the same. C. C. P., sec. 2571.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4110.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5775.

NOTE 7.—In Wyoming the same. Stats., 1890-91, sec. 2, p. 265.

NOTE 8.—In Washington the same. Hill's Stats., sec. 968.

NOTE 9.—In Oregon the same as to property, but not as to a will, unless a will is property, which it seems to be. Hill's Laws, sec. 1121, p. 720.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1090.

### **No. 1103.—Petition for Appointment of Special Administrator.**

[TITLE OF COURT AND ESTATE.]

To the Honorable, the Judge of the Probate Court in and for the County of Butte, State of Montana:



Your petitioner states that he is qualified to serve as administrator of said estate. That a petition is on file in said Court praying for letters of administration on said estate on behalf of this petition.

That there has been delay in the granting of letters of administration upon said estate, and there will probably be a longer delay before letters are granted, and it is necessary that some one should be authorized to collect and preserve the property of said estate;

Wherefore your petitioner prays that he be appointed special administrator of said estate.

Signed, *etc.*

**No. 1104.—Petition for Letters of Administration.**

[TITLE OF COURT AND ESTATE.]

To the Hon. the Superior Court of the *City and County of San Francisco, State of California*:

The petition of *Mary Jones*, of said *City and County* respectfully shows:

That *Thomas Jones* died on or about the *seventeenth* day of *May, 1895*, in the *City and County of San Francisco, State of California*;

That said deceased, at the time of his death, was a resident of the said *City and County of San Francisco, State of California*;

That said deceased left estate in the said *City and County of San Francisco, State of California*, consisting of *real and personal* property;

That the value and character of said property, so far as known to your applicant, are as follows, to wit:

[Here give a description, condition, and value of the property.]

*All of the above property was acquired by said deceased after his marriage to your petitioner, and is therefore common property;*

That the estate and effects for or in respect of which letters of administration are hereby applied for do not exceed the value of *fourteen thousand one hundred and thirty-seven dollars*;

That the next of kin of said deceased, and whom your petitioner is advised and believes, and therefore alleges to be the heirs at law of said deceased, are *your petitioner*, aged *forty* years, residing at said *City and County aforesaid*, and *James Jones*, aged *twenty-three* years, residing at the *City of Sacramento*; *William Jones*, aged *eighteen* years; *Charlotte Jones*, aged *sixteen* years, and *Emma Jones*, aged *fourteen* years, residing with your petitioner at said *City and County of San Francisco*, the children of said deceased and your petitioner;

That due search and inquiry has been made to ascertain if said deceased left any will and testament, but none has been found, and according to the best knowledge, information, and belief, of your petitioner, said deceased died intestate;

That your petitioner *is the widow* of said deceased, and therefore, as your petitioner is advised and believes, *is* entitled to letters of administration of said estate:

Wherefore, your petitioner prays that a day may be appointed for hearing this application; that due notice thereof be given by the Clerk of said Court by posting notices according to law, and that upon said hearing, and the proofs to be adduced, letters of administration of said estate may be issued to your petitioner.

And your petitioner prays.

NOTE 1.—In California the petition must be in writing, signed by the applicant or his counsel, and filed with the Clerk, stating the jurisdictional facts, and, when known to the applicant, he must state the names, ages, and residence of the heirs, and the value and character of the property. If the jurisdictional facts existed, but are not fully set forth, and are afterwards proved in the course of administration, the decree or order of administration and subsequent proceedings are not void on account of such want of jurisdictional averments. C. C. P., sec. 1371.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2725.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5357.

NOTE 4.—In Montana the same. C. C. P., sec. 2440.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4041.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5711.

NOTE 7.—In Wyoming the same, and the location of the property. Stats. 1890-91, sec. 5, p. 234.

NOTE 8.—In Washington the petition is signed by the applicant or his attorney, and filed in the superior Court, setting forth the facts giving the court jurisdiction of the case, and the applicant, at the time of making such application, shall make an affidavit, stating, to the best of his knowledge and belief, the names and places of residence of the heirs of the deceased, and that the deceased died without a will. Hill's Stats., sec. 901.

A similar affidavit, with such variations as the case may require, is made by administrators of the goods remaining unadministered, and by administrators during the time of a contest about a will or contest about the granting of letters. Id., sec. 902.

NOTE 9.—In Oregon, in an application to prove a will, or for the appointment of an executor or administrator, the petition shall set forth the facts necessary to give the court jurisdiction, and also state whether the deceased left a will or not, and the names, age, and residence, so far as known, of his heirs. Hill's Laws, sec. 1092, p. 712.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1021.

NOTE 11.—In Colorado. See Citation.

## No. 1105.—Petition for Provision for Support of Family until Return of Inventory.

[TITLE OF COURT AND ESTATE.]

To the Hon. Superior Court of the *City and County of San Francisco, State of California*:

The petition of *Mary Thomas, the administratrix of the estate of John Thomas, deceased*, respectfully shows:

That said *John Thomas* died on the *seventeenth day of May, 1895*, leaving a *widow, Mary Thomas, and three minor children*;

That letters of administration of the estate of said deceased have been granted to *your petitioner*, and that no inventory has yet been returned;

That said *Mary Thomas* is without estate of her own, and wholly dependent upon said estate for maintenance; that said estate is amply able to provide an allowance to said *Mary Thomas* for her support, to the extent of *one hundred dollars per month, gold coin of the United States*, which is a reasonable amount for

that purpose, according to *her* circumstances and accustomed mode of life:

Wherefore your petitioner prays that an allowance out of said estate, to said amount of *one hundred* dollars per month, *gold coin of the United States*, be made by your Honor for the support of the family of said deceased until the return of said inventory.

And your petitioner will ever pray.

See No. 1062. Order providing for Support of Family.

### No. 1106.—Petition to Mortgage.

[TITLE OF COURT AND ESTATE.]

The petition of *Mary Dix, the administratrix* of the estate of *Casper Dix*, deceased, respectfully shows:

1. That said *Casper Dix* died *intestate* in the said *City and County of San Francisco, State of California*, on the *6th day of May, 1893*. That at the time of his death he was a resident of said *City and County*, and left estate therein consisting of real and personal property.

2. That on the *26th day of May, 1893*, on proceedings herein for that purpose duly had, your petitioner was, by this Court, appointed the *administratrix of the estate of said Casper Dix, deceased*, and she having thereupon duly qualified as such administratrix, letters of *administration* of the said estate were duly issued to her on said day. At all times since she has been, and now is, the duly appointed, qualified, and acting administratrix of the estate of *Casper Dix, deceased*. That on the *22d day of August, 1893*, your petitioner returned and filed herein a true inventory and appraisement of all the property of said estate. That your petitioner has caused notice to the creditors of said deceased and of his said estate to be published, as required by law and the order of this Court; and that heretofore, to wit, on *May 31, 1894*, this Court made and filed herein its decree declaring that due notice to said creditors had been duly given. That the time for presentation of the claims of said creditors has expired.

That on the *13th day of August, 1894*, your petitioner filed herein her first annual account of her administration of said estate, which, on the *28th day of August, 1894*, was, by this Court, duly approved as rendered. That by said account it appeared that there was then in her hands belonging to said estate a cash balance of *eight hundred and ninety and  $\frac{1}{100}$  dollars*. That she has since collected the further sum of *\$1,000*, so that the total amount now in her possession belonging to said estate is the sum of *\$1,890  $\frac{1}{100}$* .

That the other personal property of said estate consists of *promissory notes and bills receivable for store accounts which are*



difficult to collect or realize upon, and that the same cannot be collected within one year herefrom. Upon her information and belief she states that the total amount of money finally realized from said collections will not exceed the sum of \$3,000.

[Description.]

That the real property of said deceased and of his said estate is situated in the City and County of San Francisco, and is described as follows:

That the said lot of land has five buildings thereon, and that they now yield a monthly rental of one hundred and ten dollars. That the value of said real property, as set forth in said appraisements on file herein, is the sum of twenty thousand seven hundred and sixty-eight dollars.

That said real property is encumbered by (1) a mortgage to secure the payment of two thousand dollars by said deceased, the claim wherefor has been presented and allowed herein as a debt of said estate, and (2) a lease for five years from March 1, 1894, covering the southwest corner of said lot fronting thirty-one and a half feet on Filbert street by ninety feet on Fillmore street.

That claims of the creditors of said deceased and of his said estate have been presented, approved, and filed herein as follows:

Claimant.	Character of Claim.	Amount due.
Tillmann & Bendel,	Merchandise	\$1,049 79
Pacific Coast C. C. M. Co.,	"	330 00
Otto Luhrs,	"	27 75

[If others state same as above.]

There has been paid on account of the above claims and of the interest thereon the sum of eleven hundred and seventy-four dollars. That the total amount thereof now due and unpaid is the sum of nine thousand six hundred and ninety-four  $\frac{27}{100}$  dollars.

That there are no legacies nor charges of administration now due or unpaid. That it would be to the advantage of said estate to borrow the sum of ten thousand dollars, secured, to be repaid by a mortgage on the hereinbefore described real property, for the following reasons, namely:

The approved claims of creditors of said estate, amounting to about ten thousand dollars, as hereinbefore stated, are now due and must speedily be paid by said estate. The proceeds of the personal property of said estate cannot be realized upon within one or more years, and can then pay only a small portion of said indebtedness of the estate. Hence money to pay that indebtedness must be procured at once, either by a sale of said real property or by a loan secured by mortgage on it. But the real estate market in this City and County is in a greatly depressed condition, and a sale of said real property at this time would realize, as your petitioner is informed and believes, not more than seventy-five per cent of its said appraised value. In the judgment of real estate dealers, if such sale be deferred for two years, it would realize for said estate a price equal to, or exceeding, the said appraised value; and your petitioner coincides in that opinion.

*That the present rents of the said real property will pay the interest on such mortgage, and leave a small surplus to be applied to the support of the family of said deceased.*

*That the said deceased left no will or testament, and hence, no devisees nor legatees. That the heirs and next of kin of said Casper Dix, deceased, surviving him are your petitioner, his surviving wife, and their two children, Mabel Dix, aged thirteen years, and Frank C. Dix, aged eleven years, both residing with your petitioner in this City and County.*

Your petitioner alleges, therefore, that it would be for the advantage of said estate to raise sufficient money by a mortgage on said described real property of said estate wherewith to pay the said approved claims and debts of said estate.

Wherefore your petitioner prays for an order of this Court authorizing, empowering, and directing her, as the administratrix of said estate, to borrow the *sum of ten thousand dollars, or such lesser sum as shall to the Court appear necessary* wherewith to pay the debts of said estate, for a period of not less than *two years*, at a rate of interest not exceeding *eight per cent per annum*, payable *monthly* during said period, and to mortgage to the lender of such money to secure to him the repayment of such loan, the hereinbefore described real property of said deceased and of his said estate, and that in said mortgage she be permitted to make such covenants as are usually in such instruments contained and not contrary to the provisions of law in this regard.

Signed, *etc.*

[Verified.] See Nos. 970, 971.

NOTE 1.—In California to obtain an order to mortgage realty.

1. The executor, administrator, guardian of any minor, or incompetent person, or any person interested in the estates of such decedents, minors, or incompetent persons may file a verified petition, showing,—1. The particular purpose or purposes for which it is proposed to make the mortgage, which shall be either to pay the debts, legacies, or charges of administration, or to pay, reduce, extend, or renew some lien or mortgage already subsisting in [on] said realty, or some part thereof; 2. A statement of the debts, legacies, charges of administration, liens, or mortgages, to be paid, reduced, extended, or renewed, as the case may be; 3. The advantage that may accrue to the estate from raising the required money by mortgage, or providing for the payment, reduction, extension, or renewal, of the subsisting liens, or mortgages, as the case may be; 4. The amount to be raised, with a general description of the property proposed to be mortgaged; and, 5. The names of the legatees and devisees, if any, and of the heirs of the deceased, or of the minor, or of the incompetent person, as the case may be, so far as known to the petitioner. C. C. P., sec. 1575. See Order. See also Mortgage Order of Court.

NOTE 2.—In South Dakota the guardian of the estate of a minor may, by leave of the Court, mortgage the ward's property for a term not exceeding the minority. Application is made to the County Court, by petition, stating the condition of the estate and the facts and circumstances on which the petition is founded, with a description of the premises. Stats. 1890, pp. 267, 268. See Order to Show Cause.

NOTE 3.—In Wyoming, if not in violation of the terms of a will, a minor's lands may be mortgaged on the guardian's application, when a mortgage is necessary for the support or education of the ward, or when his interest will be promoted by reason of the unproductiveness of the property, or of its being exposed to waste, or of any other peculiar circumstance. Rev. Stats., sec. 2259.

The petition must state the grounds of the application and be verified. Id., sec. 2260.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 272.

NOTE 5.—In Washington guardians of insane or *non compos* person may mortgage real estate to pay debts or maintain the ward, or to better invest the proceeds of the ward's estate. The proceedings are by petition. Stats., of 1893, pp. 288, 289.

NOTE 6.—In Colorado the proceedings to mortgage real estate are the same as on petition to sell. Mills' Stats., secs. 4750, 4756. See Petition to Sell Real Estate.



**No. 1107.—Petition for Order Setting Apart Personal Property, etc.**

[TITLE OF COURT AND ESTATE.]

To the Hon. the Superior Court of the *City and County of San Francisco, State of California*:

The petition of *Mary Jones, the administratrix of the estate of Thomas Jones*, deceased, respectfully shows:

That, on the *third day of June, 1895*, an inventory and appraisement of said estate were duly returned to said Superior Court;

That, as appears by said inventory and appraisement, said estate has been appraised at the sum of *fourteen thousand one hundred and thirty-seven* dollars;

That the debts of said estate *are few, and* do not exceed, in all probability, the sum of *three thousand* dollars; and that said estate is solvent;

That your petitioner is advised and believes that the following personal property, belonging to said estate, and mentioned in said inventory and appraisement, is by law exempt from execution, to wit: *one parlor stove, one large mirror, two small mirrors, five carpets, four bedsteads, beds and bedding, twelve chairs, three tables, one desk, one sofa, one cooking-stove*;

That the amount of said personal property, which is by law exempt from execution, is insufficient for the support of the *widow and children* of said deceased; and that an allowance out of the said estate is necessary for the maintenance of the said family; and that the sum of *one hundred* dollars, *gold coin of the United States*, per month, is a reasonable allowance, according to the circumstances of said family:

Wherefore your petitioner prays that all of the said personal property may be set apart for the use of the said family; and that an allowance of *one hundred* dollars, *gold coin of the United States*, per month, be made for the maintenance of said family, out of said estate, during the progress of the settlement of said estate.

And your petitioner will ever pray.

See No. 1020. Decree Setting Apart Homestead.

**No. 1108.—Petition for Decree Setting Apart Homestead for Use of Family.**

[TITLE OF COURT AND ESTATE.]

To the Honorable, the Superior Court of the *City and County of San Francisco, State of California*:

The petition of *Mary Jones, the administratrix of the estate of Thomas Jones*, deceased, respectfully shows:

That said deceased was a resident of the said *City and County of San Francisco* at the time of his death, and left estate, *real and personal*, in said *City and County*;



That letters of *administration* were issued to said *Mary Jones* on the *sixteenth* day of *May, 1895*; and that on the *third* day of *June, 1895*, said *administratrix* duly returned an inventory and appraisement of said estate to said Superior Court;

That a certain quantity of land in said inventory, and hereinafter particularly described, together with the dwelling-house thereon and its appurtenances, was selected by said deceased in his lifetime, and was occupied by said deceased and his family at the time of his death, as a homestead; that since the said time of his death, and up to this date, *the widow, the said Mary Jones, and the children of said deceased*, have remained in the possession of the said homestead;

That the same does not exceed in value the sum of five thousand dollars, and was appraised, as appears by said inventory and appraisement, at the sum of *three thousand* dollars only;

That said selection was made by said deceased and his said wife, *Mary Jones*, declaring their intention, in writing, to claim the same as a homestead; that said declaration stated an estimate of the value of said land, and showed that they were married and the heads of a family; that they were, at the time of making such declaration, residing with their family on said premises (said premises being particularly described in said declaration), and that it was their intention to use and claim the same as a homestead, which said declaration was signed by the said party making the same, and acknowledged and recorded as conveyances affecting real estate are required to be acknowledged and recorded;

That the family of said deceased consists of said *Mary Jones, his widow, and William Jones, James Jones, Charlotte and Emma Jones, his children*;

That the said quantity of land hereinbefore referred to is situated in said *City and County of San Francisco, State of California*, and is bounded and particularly described as follows, to wit:

[Description.]

Wherefore, your petitioner prays that the said homestead, consisting of said quantity of land, together with the dwelling-house thereon and its appurtenances, be set apart for the use of the family of the said deceased.

And your petitioner will ever pray.

See No. 1020. Decree Setting Apart Homestead.

**No. 1109.—Petition for Order of Sale of Personal Property.**

[TITLE OF COURT AND ESTATE.]

To the Hon. *John F. Finn*, Judge of the Superior Court of the *City and County of San Francisco, State of California*:

The petition of *Mary Jones, the administratrix of the estate of Thomas Jones, deceased*, respectfully shows:

That on the sixteenth day of May, 1895, letters of administration of the estate of said deceased were issued to your petitioner, and that said letters have not been revoked;

That immediately after her appointment she caused to be duly published, according to law, a notice to the creditors of the said deceased;

That the following claim against the said estate has been duly allowed and filed in said Court, to wit:

The claim of John Smith, for the sum of \$1,500, with accruing interest, at the rate of two per cent per month from the twentieth day of April, 1895, on the sum of \$1,000, which said claim was presented to, and allowed and approved by said administratrix, on said twentieth day of June, 1895, and presented to and allowed and approved by, the Judge of said Court, on the twenty-second day of June, 1895.

That the following expenses of administration have been incurred, to wit:

Fees of Clerk of this Court.....	\$ 16 50
Fees of Appraisers of Estate.....	30 50
Fees of Attorney for Administratrix.....	100 00

Amounting to the sum of..... \$ 147 00

That on the sixth day of July, 1895, an allowance of one hundred dollars per month was duly made out of said estate, by said Court, for the maintenance of the family of said deceased, during the progress of the settlement of said estate, payable on the sixth day of each and every month, and amounting, at this date, to the sum of..... 100 00

That at least one year from the time of the appointment of said administratrix, to wit, from May 16, 1895, must elapse before said estate can be closed, when said allowance will have amounted to the additional sum of..... 1,030 00

Amount of family allowance due and to become due..... \$1,130 00

That the following expenses of administration will necessarily be incurred before said administration can be closed, and the estate finally settled, to wit:

Fees of Attorney for administratrix, upon closing said estate, as per agreement.....	\$ 400 00
Commissions upon \$14,137.00, the appraised value of said estate, and the probable amount of the whole estate to be accounted for by the said administratrix, upon the settlement of her final account...	695 48
Other expenses.....	100 00

Amounting to the sum of..... \$1,195 48

And making, with the said sum of..... 1,500 00

And ..... 147 00

And ..... 1,130 00

The sum of..... \$3,972 48

That no moneys of said estate have come to the hands of your petitioner, except the sum of fifty dollars.

That said intestate died possessed of personal property, particu-



larly described in the inventory and appraisement heretofore returned to said Court, and appraised at the sum of \$4,850 (exclusive of the household furniture heretofore set apart for the use of said family), as will appear by said inventory and appraisement, which your petitioner begs leave to make a part of this petition, and that said property is now of the value of about \$4,000 only.

That, therefore, a sale of the whole, or some portion of said personal property, is necessary for the payment of said claim, expenses of administration, and allowance to the family.

Wherefore your petitioner prays that, after notice given of the hearing of this application, said Court order a sale of the whole or so much of the said personal property as shall be necessary for the payment of said claim, expenses of administration, and allowance to the family of said deceased, or that such other or further order may be made as is meet in the premises.

And your petitioner will ever pray.

NOTE 1.—In California, the executor, administrator, or special administrator may apply to the Court or Judge for an order to sell perishable and other personal property likely to depreciate in value, or which will incur loss or expense by being kept, and so much other personal property as may be necessary to pay the allowance made to the family of the decedent. The order for the sale may be made without notice; but the executor, administrator, or special administrator is responsible for the property, unless, after making a sworn return, and on a proper showing, the Court shall approve the sale. C. C. P., secs. 1522, 1523 [see Order to Sell Personal Property].

NOTE 2.—In Nevada the same, and in case of urgent necessity such property may be sold without order. Gen. Stats., secs. 2819, 2820.

NOTE 3.—In Idaho the same as in California. Rev. Stats., secs. 5494, 5495.

NOTE 4.—In Montana the same. C. C. P., sec. 2650.

NOTE 5.—In Utah the same as in Nevada. Comp. Laws, secs. 4148, 4149.

NOTE 6.—In North and South Dakota the same as in California. Comp. Laws, secs. 5816, 5817.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 5, p. 275.

NOTE 8.—In Washington, within twenty days after the filing of the inventory, the executor or administrator must apply for an order to sell the perishable property, and so much other property as may be necessary to pay the allowance made to the family of the deceased, and the order of sale may be made without notice, but the executor or administrator shall be responsible for the value of the property, unless the sale be reported to and approved by the Court. Hill's Stats., sec. 1000.

NOTE 9.—In Oregon no sale can be made, unless under the Court's order, and proceedings are commenced by petition. When the inventory is filed, or at the next term, the executor, or administrator must apply for an order of sale to pay expenses and debts, and to distribute the balance. The Court may prescribe the terms of sale, for cash or on credit. Such sales are conducted the same as sales of personal property on execution. Also a private sale may be ordered. Hill's Laws, secs. 1141, 1142, 1143, p. 728; Stats. 1893, p. 96.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1135.

NOTE 11.—In Colorado. See Order of Sale. There is no petition provided for, but the Court may make an order to sell at public or private sale. The return is made in a form of a "bill of the sale," describing particularly each article sold, to whom sold and at what price, and it is returned to the "office of the County Judge" in the like manner as is required in the case of inventories and appraisements. Mills' Stats., sec. 4744.

## No. 1110.—Petition for Order of Sale of Real Estate.

[TITLE OF COURT AND ESTATE.]

To the Hon. John F. Finn, Judge of the said Superior Court of the City and County of San Francisco, State of California:

The petition of Mary Jones, the administratrix of the estate of Thomas Jones, deceased, respectfully shows:

That said Thomas Jones died intestate, on or about the seven-



*teenth day of April, 1895, in the City and County of San Francisco, being at the time of his death a resident of the City and County of San Francisco, and leaving estate in said City and County.*

That on the *sixteenth day of May, 1895*, your petitioner duly qualified as such *administratrix*, and that letters of *administration* of said estate, signed by the Clerk, and under the seal of said Court, were thereupon duly issued to your petitioner, and have not been revoked.

That your petitioner duly made and returned to said Court, after her appointment, to wit, on the *sixth day of June, 1895*, a true inventory and appraisement of all the estate of the said deceased, which has come to her possession or knowledge, and also published notices to the creditors of said decedent as required by law.

All which will more fully appear by reference to the papers on file in the Clerk's office, and to the records of said Court in the matter of said estate, which is hereby made.

1. That the amount of personal estate that has come to the hands of your petitioner is the sum of.....\$4,168 50  
*Appraised value of the personal property set apart for the use of the family of the deceased..... 287 00*

*Whole amount of personal property.....\$4,455 50*

That a portion of said personal property has been disposed of as follows, to wit:

*The said personal property set apart for the use of said family, and the sum of \$458.50, cash paid, expenses of administration, and family allowance, leaving in the hands of your petitioner the sum of only.....\$3,710 00*

2. That the debts outstanding against the said deceased, as far as can be ascertained or estimated, amount at this date to the sum of..... 2,450 00

And are fully set forth in the schedule marked "A," hereunto annexed, and made a part of this petition.

3. That the amount due upon the family allowance is the sum of..... 600 00

4. That the debts, expenses, and charges of the administration already accrued, amount to the sum of.. 458 50

And are fully set forth in the schedule marked "B," hereunto annexed, and made a part of this petition.

5. That the debts, expenses, and charges of administration that will or may accrue during the administration are estimated by your petitioner at the sum of..... 1,195 48

And are fully set forth in the schedule marked "C," hereunto annexed, and made a part of this petition.

Whole amount of the debts outstanding against the deceased, of the amount due and to become due upon

the family allowance, of the debts, expenses, and charges of administration already accrued and remaining unpaid, State and County taxes, and of the estimated debts, expenses, and charges of administration that will or may accrue.....\$4,475 48

That a full description of all the real estate of which the said decedent died seised, or in which he had any interest, or in which the said estate has acquired any interest, and the condition and value of the *respective portions and lots* of said real estate, are set forth in the schedule marked "D," hereunto annexed, and made a part of this petition.

That the whole of said real estate was acquired by said deceased, after his marriage to your petitioner, and is, therefore, community property.

That the following are the names and ages of the devisees [if any] and heirs of the said deceased, to wit: James Jones, aged twenty-three years; William Jones, aged eighteen years; Charlotte Jones, aged sixteen years; and Emma Jones, aged fourteen years, the children of said deceased and your petitioner.

Your petitioner therefore alleges that the personal estate in the hands of your petitioner is insufficient to pay the allowance of the family, the debts outstanding against the deceased, and the debts, expenses, and charges of the administration, and that it is necessary to sell the whole or some portion of the real estate for such purposes.

#### SCHEDULE "A."

Claim of John Smith, for the sum of \$1,500, with interest on the sum of \$1,000, at the rate of two per cent per month, from the twentieth day of April, 1895.

Allowed and approved by the administratrix June 20, 1895, and by the Judge of this Court June 22, 1895.

Claim of George Taylor, funeral expenses, for the sum of \$200.

Allowed and approved by the administratrix June 21, 1895, and by the Judge of this Court June 23, 1895.

Claim of Dr. C. G. Bryant, expenses last sickness, for the sum of \$250.

Allowed and approved by the administratrix and the Judge of this Court July 1, 1895.

Claim of Alfred Pope, balance of account, for the sum of \$500.

Allowed and approved by the administratrix and the Judge of this Court July 5, 1895. Total, \$2,450.

MARY JONES,  
Administratrix.

#### SCHEDULE "B."

Fees of Clerk of this Court.....	\$ 16 50
Fees of Appraisers of Estate.....	30 50
Fees of Attorney for Administratrix.....	100 00
Publication of Notice to Creditors.....	5 00

<i>Publication of Notice of Application for Order of Sale of Personal Property</i> .....	\$ 5 00
<i>Notary Fees, Affidavits to Return of Sale of Personal Property</i> .....	1 50
<i>Allowance to Family of Deceased</i> .....	300 00
	<hr/>
	\$ 458 50

MARY JONES,  
Administratrix.

#### SCHEDULE "C."

<i>Fees of Attorney for Administratrix upon Closing said Estate, as per Agreement</i> .....	\$ 400 00
<i>Commissions upon \$14,137.00, the Appraised Value of said Estate, and the Probable Amount of the Whole Estate to be Accounted for by the said Administratrix, upon the Settlement of her Final Account</i> .....	695 48
<i>Other Expenses</i> .....	100 00
	<hr/>
	\$1,195 48

MARY JONES,  
Administratrix.

#### SCHEDULE "D."

[Give list and value of real property, describing same by metes and bounds, and stating whether it is improved or unimproved, the number and character of the buildings, etc., the amount of rents received from it, and any other fact tending to show the condition of the property.]

MARY JONES,  
Administratrix.

[That it will be for the best interests of this estate to sell said property at private sale, giving reasons.]

Wherefore your petitioner prays that an order be made by said Court [or your Honor], directing all persons interested in said estate to appear before said Court at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to your petitioner to sell so much of the real estate of the deceased as shall be necessary, at private sale.

And that after a full hearing of this petition, and examination of the proofs and allegations of the parties interested, and due proof of the publication of a copy of said order to show cause, etc., an order of sale be made, authorizing your petitioner to sell so much and such parts of the said real estate as said Court shall judge necessary or beneficial; or that such order or further order may be made as is meet in the premises.

And your petitioner will ever pray, etc.

[Verified.] See Nos. 970, 971.

NOTE 1.—In California the petition must be verified, setting forth the amount of personal estate that has come to the petitioner's hands, and how much remains undisposed of; the debts outstanding, as far as can be ascertained or estimated; the amount due upon the family allowance, or what will be due after the same has been in force for one year; the debts, expenses, and charges of administration already accrued, and an estimate of what will or may accrue during the administration [a general description of all the real property of the estate or in which deceased had any interest, or in which the estate has acquired any interest, and the condition and value thereof, and whether the same be community or separate property; the names of the legatees and devisees, if any, and of the heirs of the deceased, so far as known to the petitioner. If any of the matters here enumerated cannot be ascertained it must be so stated in the petition; but a failure to set forth the facts showing the sale to be necessary will not invalidate the subsequent proceedings if the defect be supplied by the proofs at the hearing, and the general facts showing such necessity be stated in the decree]. C. C. P., sec. 1537.



NOTE 2.—In Nevada the same to the words in brackets; then come the words "a description of all the real estate of which the decedent died seised, or in which he had any interest, or in which the estate has acquired any interest, and the condition and value of the respective portions and lots thereof, and whether the same be community or separate property; the names and ages of the devisees, if any, and of the heirs of the decedent. If all the matters above enumerated cannot be ascertained it must be so stated in the petition." [Reference may be made to the inventory for a description of the land instead of describing it in the petition.] Gen. Stats., sec. 2824.

NOTE 3.—In Idaho the same as in Nevada, except the part in brackets omitted. Rev. Stats., sec. 5505.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2671.

NOTE 5.—In Utah the same as in California. Comp. Laws, sec. 4159.

NOTE 6.—In North and South Dakota the same as in California. Comp. Laws, sec. 5822.

NOTE 7.—In Wyoming the same as in California. Stats. 1890-91, sec. 15, p. 277.

NOTE 8.—In Washington the petition must set forth the amount of the personal estate that has come to his hands, and how much, if any, remains undisposed of, a list and the amounts of the debts outstanding against the deceased, as far as the same can be ascertained, a description of all the real estate of which the testator or intestate died seised, the condition and value of the respective lots and portions, the names and ages of the devisees, if any, and of the heirs of the deceased, which petition shall be verified by the oath of the party presenting the same. Hill's Stats., sec. 1005. Also, Stats. 1893, p. 85.

NOTE 9.—In Oregon the petition must state the amount of the sales of personal property, the charges, expenses, and claims, still unsatisfied, so far as the same can be ascertained, a description of the real property of the estate, the condition and probable value of the different portions or lots thereof, the amount and nature of any liens thereon, the names, ages, and residence of the devisees, if any, and of the heirs of the deceased, so far as known. Hill's Laws, sec. 1146, p. 730.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1146.

NOTE 11.—In Colorado the petitioner presents to the County Court out of which letters testamentary or of administration issued, or to the District Court of the same county, or of the county to which such county is attached for judicial purposes, his petition setting forth the amount and value of the personal estate, according to the inventory and appraisement thereof, and, if sale has been made of such personal estate, the amount received from such sale, the amount of debts and claims allowed against the estate, and the amount still existing and not allowed, so far as the same may be known, the amount of legacies, if any, for the payment of which resort must be had to the real estate, and describing particularly the whole of the real estate whereof the decedent died seised, or in or to which he or she, at the time of his or her decease, had any interest, claim, or right; the nature of his or her claim, right, or title; the nature and value of the several parcels of such real estate, respectively, and, if the same or any thereof are encumbered, the nature and amount of such encumbrance, and pray the aid of the court in the premises.

To such petition the widow or husband and heirs at law of such decedent, and the devisees of such real estate, if the same or any thereof be devised in the will of the decedent, and the guardians of such of them as may be minors, shall be made defendants. Mill's Stats., sec. 4751; *provided*, if the executor or administrator is the widow or husband, or heir at law, or a devisee, he or she need not be made a defendant. Such petition is in the nature of a complaint or bill in equity.

## No. 1111.—Petition that Surviving Partner Render an Account.

[TITLE OF COURT AND ESTATE.]

To the Hon. the Superior Court of the *City and County of San Francisco*, State of *California*:

*Henry Jones*, administrator of the estate of *William Blair*, deceased, respectfully shows:

That at the time of the death of said deceased, to wit, on *January 3, 1895*, there was a partnership between deceased and *Silas Blair*, composing the late firm of *Blair & Blair*, and doing business as *grocers* under said name and style at *3129 Valencia street*, in said *City and County*.

That said surviving partner continued, and still is, in possession of the effects of the said partnership for the purpose of settling the business.

That the interest of the said deceased, to wit, *one-half* of the assets of said partnership, was included in the inventory heretofore made and returned by said *administrator* to this Court, and was appraised as other property, the appraised value thereof being the sum of \$3,167.97.

That the said surviving partner has delayed and *is* delaying the settling of the affairs of said partnership, more than *one year* having elapsed since the said inventory has been filed; and has not accounted with the said *administrator*, though often requested so to do, but has refused, and still refuses, to account with said *administrator*, or to give any information as to the condition of the affairs of said partnership; and has never paid over any such balances as may, from time to time, have been payable to said *administrator* on account of said estate [*or said partner has promised to account, but has, and still does, neglect to render said account*].

That there are *many debts outstanding against said deceased*, and that it has become necessary to ascertain the value of said partnership interest in order to determine the necessity of selling real estate to pay said debts, and the debts, expenses, and charges of the administration.

Wherefore, said *administrator* applies to this Court for an order that the said surviving partner render an account of the said partnership, showing a full statement of its affairs at the time of the death of said deceased, and the condition thereof from that time until the day of rendering said account, and for such other or further order as may be meet in the premises.

(Dated and signed.)

NOTE 1.—In California, upon the petition [application] of the executor or administrator, the Court may order a surviving partner of the deceased to render an account and may enforce the order by contempt proceedings [attachment]. C. C. P., sec. 1585. [For attachment, see Contempt Proceedings Superior Court.]

NOTE 2.—In Nevada the same as in California. Gen. Stats., sec. 2867.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5554.

NOTE 4.—In Montana the same. C. C. P., sec. 2734.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4201.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5364.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 5, p. 2-6.

NOTE 8.—In Washington the same petition and the same order in form of citation. Hill's Stats., sec. 953.

NOTE 9.—In Oregon the same as in Washington. Hill's Laws, secs. 1103-1105, p. 715.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1183.

NOTE 11.—In Colorado the same as in California. Mills' Stats., sec. 3386.

## No. 1112.—Petition for Partial Distribution of Estate.

[TITLE OF COURT AND ESTATE.]

The petition of *John Brown*, a resident of *Downieville*, in the County of *Sierra*, State of *California*, shows:

That he, the said *John Brown* is a *brother and heir* to the estate of the said *deceased*, late of said County of *Sierra*, who died on



the *tenth day of January, 1895*, and having no surviving wife and no issue.

And your petitioner further shows, that *Henry Smith* of said County is *administrator* of said estate, the total value whereof, as appears by the inventory and appraisement thereof on file in said Court, amounts to the sum of *\$9,762*, and that more than *four months* have elapsed since the issuing of letters of *administration* on said estate to the said *Henry Smith*, and that, as your petitioner is informed and believes, there are no claims outstanding against said estate [or state the amount of claims].

Wherefore, your petitioner prays for an order of distribution of the said estate, and that the share of said estate to which he is entitled, to wit, all the property and funds belonging to the same, remaining in the hands of the said *administrator* after payment of the costs and expenses of administration, may be given to the petitioner upon the execution and delivery to the said *administrator* of the indemnity bond in such cases by law required, and for such other and further order and relief in the premises as may be just.

And your petitioner will ever pray, *etc.*

The common form of bond will answer.

See Bonds in first part.

NOTE 1.—In California, after the lapse of four months from the issuing of letters, any heir, devisee, or legatee may petition the Court for the legacy or share of the estate to which he is entitled, to be given to him upon his giving bonds, with security, for the payment of his proportion of the debts of the estate. C. C. P., sec. 1653.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2919.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5621.

NOTE 4.—In Montana the same. C. C. P., sec. 2830.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4256.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5919.

NOTE 7.—In Wyoming the same at any time after six months. Stats. 1890-91, sec. 1, p. 291.

NOTE 8.—In Washington the same as in Wyoming. Hill's Stats., sec. 1086.

NOTE 9.—In Oregon, after the first annual account, the application may be made for the rents and profits of the real estate, and the personal property the same as in California. Hill's Laws, sec. 1193, p. 743. No bond to be given.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1243.

NOTE 11.—In Colorado, see Distribution.

### No. 1113.—Petition for Distribution.

[TITLE OF COURT AND ESTATE.]

To the Hon. the said Superior Court of the *City and County of San Francisco, State of California*.

The petition of *Mary Jones, the administratrix of the estate of Thomas Jones*, deceased, respectfully shows:

That your petitioner was appointed such *administratrix* by the order of this Court on the *fifteenth day of May, 1895*, and on the *sixteenth day of May, 1895*, she duly qualified as such *administratrix*, and thereupon entered upon the administration of the estate of said deceased, and has ever since continued to administer said estate.



That on the *third* day of *June, 1895*, your petitioner duly made and returned to this Court a true inventory and appraisalment of all the estate of said deceased which had come to *her* possession or knowledge.

That on the *seventeenth* day of *May, 1895*, your petitioner duly published notice to creditors to present their claims against the said deceased, in the manner and for the period prescribed by this Court.

That more than *one year* has elapsed since the appointment of your petitioner as such *administratrix*, and more than *ten* months have expired since the first publication of said notice to creditors.

That on the *sixteenth* day of *June, 1895*, your petitioner filed *her* accounts as such *administratrix*, which said accounts, after due hearing and examination, were finally settled.

That all the debts of said deceased and of said estate, and all the expenses of the administration thereof thus far incurred, and all taxes that have attached to or accrued against the said estate, have been paid and discharged, and said estate is now in a condition to be closed.

That the residue of the said estate now remaining in the hands of your petitioner is fully set forth and described in the schedule marked "*A*," hereunto annexed and made a part of this petition.

That the *whole* of said estate is *common* property, *it having been acquired by said deceased after his marriage to your petitioner.*

That the said *Thomas Jones* died intestate, in the *City and County of San Francisco*, on the *seventeenth* day of *April, 1895*, leaving him surviving your petitioner, his widow, now aged *forty-one* years, residing at said *City and County*; and *James Jones*, now aged *twenty-four* years, residing at the *City of Sacramento*; *William Jones*, now aged *nineteen* years; *Charles Jones*, now aged *seventeen* years, and *Emma Jones*, now aged *fifteen* years, residing with your petitioner, at said *City and County of San Francisco*, the children of said deceased and of your petitioner, and his only descendants.

That the said petitioner is entitled to the *one-half* of the residue of said estate, and the said descendants of said deceased are entitled to the other half of said residue of said estate.

#### SCHEDULE "A."

##### *Personal Property:*

*Cash*.....\$1,302 02

##### *Real Property:*

[Here insert full description.]

Wherefore your petitioner prays that the administration of said estate may be brought to a close, and that *she* may be discharged from *her* trust as such *administratrix*.

That, after due notice given and proceedings had, the estate remaining in the hands of your petitioner as aforesaid may be distributed in the proportions and to the said parties entitled thereto

as aforesaid, to wit, the one-half of the said residue to the said surviving wife, and the other half to the said descendants of the said deceased, or that such other or further order may be made as is meet in the premises.

And your petitioner will ever pray, etc.

See No. 1024. Decree of Distribution.

### No. 1114.—Petition for Appointment of Guardian.

[TITLE OF COURT AND ESTATE.]

To the Honorable the Superior Court of the *City and County of San Francisco, State of California*:

The petition of *Mary Jones* respectfully shows:

That your petitioner is the mother of *William Jones, Charlotte Jones, and Emma Jones*, minor children of *Thomas Jones*, late of said *City and County*, deceased;

That said minors have no guardian legally appointed by will, and are residents of said *City and County*, and have estate within said *City and County*, which needs the care and attention of some fit and proper person;

That said estate consists partly of cash and partly of undivided interests in a lot of land in said *City and County*, inherited by said minors from their late father, and lately distributed to them by a decree of the Superior Court of said *City and County*, by which said decree the administratrix of the estate of said deceased was directed to pay and deliver to the guardian of said minors the cash and real estate belonging to them [or state such other facts as show the necessity or convenience of a guardian];

That, therefore, it is necessary and convenient that a guardian be appointed to the persons and estates of said minors;

That said *William Jones* is of the age of *nineteen* years, said *Charlotte Jones* of the age of *seventeen* years, and *Emma Jones* of the age of *fifteen* years; and said minors are, at present, under the care of your petitioner;

That the only relatives of the said minors residing in said *City and County of San Francisco*, are *Frederick Wallace and Hiram Wallace*, uncles of said minors:

Wherefore, your petitioner prays that your Honor nominate and [or, if the minors are above the age of fourteen years, as in this case, and have nominated their guardian, then omit the words "nominate and," and say simply] appoint your petitioner, a fit and proper person, or such other fit and proper [or if the minors be above the age of fourteen years, omit the words "fit and proper"] person as said minors may hereinafter nominate [or if said minors are under fourteen years of age, then omit the words "as said minors may hereinafter nominate," and say, "as to your Honor may seem fit and proper"] a guardian of said minor, and that your Honor cause such notice to be given to the said

*Frederick Wallace and Hiram Wallace, as your Honor shall, on due inquiry, deem reasonable.*

And your petitioner will ever pray, *etc.*

See No. 1041. Letters of guardianship.

### No. 1115.—Petition of Guardian for Sale of Real Estate to Maintain Ward.

[TITLE OF COURT AND ESTATE.]

To the Hon. the said Superior Court of the *City and County of San Francisco, State of California.*

The petition of *Mary Jones*, the guardian of the *persons and estates of William Jones, aged 4, Charlotte Jones, aged 6, and Emma Jones, aged 8 years*, minors, respectfully shows:

That on the *twelfth day of December, 1894*, letters of guardianship were issued to your petitioner by this Court; that your petitioner thereupon duly entered upon the discharge of her duties as such guardian; and that such letters have not been revoked.

That within three months after her appointment, to wit, on the *second day of March, 1895*, your petitioner duly returned to this Court a true inventory and an appraisement of all the estate, real and personal, of her said wards that has come to her possession or knowledge.

That the following is a description of all the real estate belonging to said ward:

[Description.]

That the facts and circumstances upon which this petition is founded and which render a sale of the *whole* of the said real estate *necessary and beneficial (or either)*, are as follows:

*Said wards have no income, except the rents of said land. The best rent obtainable is three hundred dollars a year for all the land. The least sum sufficient for the maintenance of said wards is \$450 a year, or \$150 for each. The taxes on said land average \$50 a year, leaving a deficit of \$200 a year. It will be therefore necessary to sell all of said land for the purpose of using the proceeds to maintain said wards.*

Wherefore your petitioner prays that this Hon. Court make an order directing the next of kin of the said *wards*, and all persons interested in the said estate, to appear before this Court, to show cause why an order should not be granted for the sale of such estate; and that upon such hearing this Hon. Court may order said real estate to be sold, *for the maintenance and education of the said wards*, or that such other or further order may be made as is meet in the premises.

And your petitioner will ever pray, *etc.*

NOTE 1.—In California, when the income of an estate under guardianship is insufficient to maintain the ward and his family, or to maintain and educate the ward when a minor, his guardian may sell his real or personal estate for that purpose, upon obtaining an order therefor. C. C. P., sec. 1777. [See next form and notes.]

NOTE 2.—In Nevada the same in meaning as in California. Gen. Stats., ec. 568.



NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 5797.

NOTE 4.—In Montana the same. C. C. P., sec. 3000.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4331.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 6009.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 1, p. 311.

NOTE 8.—In Washington, when necessary for the education, support, or payment of the just debts of any minor, or for the discharge of any liens on the real estate of such minor, or whenever the real estate of such minor is suffering unavoidable waste, or a better investment of the value thereof can be made, the Court may, on the application of such guardian, order the same, or a part thereof, to be sold. Hill's Stats., sec. 1144.

NOTE 9.—In Oregon the same. The words to educate the ward and reference to personal estate are omitted. Hill's Laws, vol. 2, sec. 3118, p. 1388.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1350.

NOTE 11.—In Colorado. See next Form following.

### No. 1116.—Petition of Guardian for Order of Sale of Real Estate.

[TITLE OF COURT AND ESTATE.]

To the Hon. the said Superior Court of the *City and County of San Francisco, State of California.*

The petition of *Mary Jones*, the guardian of the persons and estates of *William Jones, aged 4, Charlotte Jones, aged 6, and Emma Jones, aged 8 years*, minors, respectfully shows:

That on the *twelfth day of December, 1895*, letters of guardianship were issued to your petitioner by this Court; that your petitioner thereupon duly entered upon the discharge of her duties as such guardian; and that such letters have not been revoked;

That within three months after her appointment, to wit, on the *second day of January, 1895*, your petitioner duly returned to this Court a true inventory and an appraisement of all the estate, real and personal, of her said wards that has come to her possession or knowledge;

That the following is a full description of all the real estate belonging to said minors.

*An undivided three-eighths in all that certain lot, piece, or parcel of land, situate in the City and County of San Francisco, State of California, and described as follows, to wit:*

[Description.]

*One-third of the above three-eighths, that is, an undivided one-eighth of the whole of said land, belongs to each of said minors.*

*Said minors have no other property than the above; the sum of \$165.62 1-2, belonging to each, paid to your petitioner, upon her receiving letters of guardianship, by the late administratrix of the estate of their father, Thomas Jones, deceased, and mentioned in the inventory, having been all disposed of by your petitioner, in the maintenance and education of said minors, and she has now no moneys in her hands belonging to said minors.*

*The above real estate is unimproved, and yields no income whatever; and said undivided eighth interest is of the value of \$1,500, or thereabouts, that being also the appraised value thereof.*

That the facts and circumstances upon which this petition is

founded and which render a sale of the whole of the said real estate necessary and beneficial are as follows: *The taxes, State, and City, and County, levied and collected each year, on the interest of said wards in said land are \$25.30. There is now a petition before the Board of Supervisors of said City and County to grade, sidewalk, sewer, and pave the street in front of the said land. That said petition will probably be granted and the proposed work done because the Market Street Railway Companies have a franchise for a railroad along said street, and said street is necessary for the uses of said railroad company. That your petitioner has been offered \$1,500 for said property. That if said property is sold, petitioner proposes, if permitted by the Court, to invest the proceeds in the stock of Bancroft, Whitney and Company, a corporation whose stock pays twenty per cent per annum dividends to its stockholders, and said dividends are liable to continue until said younger child is of legal age.*

Wherefore, your petitioner prays that this Honorable Court make an order directing the next of kin of the said wards, and all persons interested in the said estate, to appear before this Court at a time and place therein specified, not less than four nor more than eight weeks from the time of making such order, to show cause why an order should not be granted for the sale of such estate; and that upon such hearing, this Hon. Court may order said real estate to be sold, *in order that the proceeds may be put out at interest, or invested in some other productive stock, if not the stock aforesaid, or that such other or further order may be made as is meet in the premises.*

And your petitioner will ever pray, etc.

[Verified.]

NOTE 1.—In California the Court, upon the petition of the guardian, it appearing to be for the benefit of his ward that his real estate, or some part thereof, should be sold, and the proceeds thereof put out at interest, or invested in some productive stock, or in the improvement or security of any other real estate of the ward, his guardian may sell the same for such purpose, upon obtaining an order therefor. C. C. P., sec. 1778.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 569.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5798.

NOTE 4.—In Montana the same. C. C. P., sec. 3001.

NOTE 5.—In Utah the same in meaning. Comp. Laws, sec. 4332.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 6010.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 2, p. 311.

NOTE 8.—In Washington, whenever necessary for the education, support, or payment of the just debts of any minor, or for the discharge of any liens on the real estate of such minor, or whenever the real estate of such minor is suffering unavoidable waste, or a better investment of the value thereof can be made, the court may, on the application of such guardian, order the same, or a part thereof, to be sold. Hill's Stats., sec. 1144.

Such application is made by petition, verified by the oath of the guardian, and sets forth: 1. The value and character of all personal estate; 2. The disposition made of it; 3. The amount and condition of the personal estate, if any, dependent upon the settlement of any estate, or the execution of any trust; 4. The annual value of the real estate; 5. The amount of rent received and the application thereof; 6. The proposed manner of reinvesting the proceeds of the sale, if asked for that purpose; 7. Each item of indebtedness, or the amount and character of the lien, if the sale is prayed for the liquidation thereof; 8. The age of the ward, where and with whom residing; 9. All other facts connected with the estate and condition of the ward necessary to enable the court fully to understand the same. If there is no personal estate belonging to such ward, in possession or expectancy, and none has come into the hands of such guardian, and no rents have been received, the fact shall be stated in the application. Id., sec. 1145.

The Court may, on the application of a guardian or any other person, said guardian having due written notice thereof, order and decree any change to be made in the



investment of the estate of any ward that may to such court seem advantageous to such estate. *Id.*, sec. 1139.

NOTE 9.—In Oregon the same as in California, except "property" is "substituted" for the word "stock." *Hill's Laws*, vol. 2, sec. 3114, p. 1389.

The petition shall set forth the condition of the estate and the facts and circumstances under which it is founded tending to show the necessity or expediency of such sale, and the petition to be verified. *Id.*, sec. 3118, p. 1390.

NOTE 10.—In Arizona the same as California. *Rev. Stats.*, sec. 1351.

NOTE 11.—In Colorado the District Court has power to order the sale of a minor's real estate in certain cases when the personalty is exhausted. Although the wording of the statute is different the sense is substantially the same as ours. The proceeding is by petition, and the same form can be used without alteration. *Mills' Stats.*, sec. 1312.

### No. 1117.—Petition for Order for New Bond.

[TITLE OF COURT AND ESTATE.]

To the Honorable the *Superior Court* in and for the *County of Nevada*:

The petition of *John Smith* shows that he is a son of *William Smith*, said deceased. That since the *administrator* of said estate filed his bond given on qualifying, *Henry Williams* has become, and is now, insolvent.

[Or said *Henry Williams* has removed from the *State of California* and now resides in the *State of Nevada*.] [Or said *Henry Williams* has sent his wife and family out of the *State of California*; has sold all of his property in *California* and is about to leave said *State* without intention of returning.]

Wherefore petitioner prays that said *administrator* may be ordered to give furtherly security in the form of a new bond.

Signed, etc.

[*Verified* the same as a complaint in civil cases.]

NOTE 1.—In California a person interested in an estate may, by verified petition, represent to the Superior Court, or a Judge thereof, that the sureties of an executor or administrator thereof have become, or are becoming, insolvent, or that they have removed, or are about to remove, from the State, or that from any other cause the bond is insufficient, and ask that further security be required. *C. C. P.*, sec. 1397.

NOTE 2.—In Nevada the same. *Gen. Stats.*, sec. 2747.

NOTE 3.—In Idaho the same. *Rev. Stats.*, sec. 5380.

NOTE 4.—In Montana the same. *C. C. P.*, sec. 2480.

NOTE 5.—In Utah the same. *Comp. Laws*, sec. 4064.

NOTE 6.—In North and South Dakota the same. *Comp. Laws*, sec. 5734.

NOTE 7.—In Wyoming the same. *Stats.* 1890, sec. 10, p. 258.

NOTE 8.—In Washington the same. *Hill's Stats.*, sec. 916.

NOTE 9.—In Oregon the same. *Hill's Laws*, sec. 1096, p. 713.

NOTE 10.—In Arizona the same. *Rev. Stats.*, sec. 1044.

NOTE 11.—In Colorado the same in general effect. *Mills' Stats.*, secs. 4721, 4722.

### No. 1118.—Petition of Surety—Release from Bond.

[TITLE OF COURT AND ESTATE.]

To the Honorable the *Superior Court* of the *County of Sierra*:

Your petitioner is a surety on the bond of the *administrator* of said estate, and he desires to be released from further responsibility as such surety.

Wherefore he prays for an order requiring the said *administrator* to appear in said Court and show cause why petition should



not be released as herein prayed for, and to show cause why he should not give other security.

Signed, *etc.*

NOTE 1.—In California, when a surety desires to be released from responsibility on account of future acts, he may make application to the Superior Court for relief. The Court must cause a citation to the executor or administrator to be issued, and served personally, requiring him to appear at a time and place to be therein specified, and to give other security. C. C. P., sec. 1403.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2753.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5336.

NOTE 4.—In Montana the same. C. C. P., sec. 2486.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4070.

NOTE 6.—In North and South Dakota the same. Comp. Laws, 5740.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 16, p. 258.

NOTE 8.—In Arizona the same. Rev. Stats., sec. 1050.

NOTE 9.—In Washington, Oregon, and Colorado the Courts regard such bonds as contracts between the principal and surety, and cannot be changed or set aside, except by mutual consent. Of course a Court may order additional security to be given.

### No. 1119.—Report of Administratrix Accompanying Account.

[TITLE OF COURT AND ESTATE.]

To the Hon. the (or the Judge of) said Superior Court of the City and County of San Francisco, State of California:

Mary Jones, the administratrix of the estate of Thomas Jones, deceased, on this, the sixteenth day of June, 1895, respectfully renders the following report of her administration:

That letters of administration of said estate were issued to her on the sixteenth day of May, 1895.

That immediately after her appointment she caused notice to creditors to be published in the *Daily Evening Bulletin*, a newspaper published in said City and County.

That, within ten months after the first publication of said notice, four claims against the said deceased, accompanied by proper affidavits, and supported by satisfactory vouchers, were presented to the said administratrix, and allowed by her and the Judge of this Court, the amounts, the dates of presentation and allowance, and all the particulars of which claims are contained in the statement of debts annexed to said administratrix's annual account, this day rendered.

That another claim was also presented, but rejected, and no suit has ever been brought against said administratrix therefor, as will be seen by said account and the statement annexed, the balance of money now in the hands of said administratrix is the sum of \$5,795.50, and the claims allowed amount to the sum of \$2,450, and the expenses of closing said estate amounting only to the sum of \$1,195.48; there is, therefore, money sufficient in my hands to pay all the debts and expenses, and said administratrix will soon be able to bring her administration to a close.

Said administratrix prays that the Judge of [or said] Court appoint a day of a term of said Court for settlement of said account,

and that on the day appointed, or on such subsequent day as the hearing may be adjourned to, *after the appointment by said Court of some person to represent the minors interested in the said estate who have no legally appointed guardian*, it being first proved to the satisfaction of said Court that due and legal notice of the time appointed for the settlement of said account has been given, said account be settled and allowed by said Court.

And said *administratrix* will ever pray, *etc.*

See No. 1028. Exhibit Six Months After Appointment.

### No. 1120.—Request for Appointment of Administrator.

[TITLE OF COURT AND ESTATE.]

Whereas, *Henry Smith* has petitioned said Court to be appointed administrator of the estate of said *Silas Wright*, deceased, he not being entitled to receive said letters unless at the request of the person entitled to letters. Now comes *Mary Wright*, the widow of said *Silas Wright*, and an *unmarried person*, and, waiving her right to be appointed administratrix of said estate in favor of said *Henry Smith*, prays the Court to grant the petition of said *Henry Smith*.  
(Signed) *MARY WRIGHT*.

STATE OF NEVADA. }  
County of Storey. }

Mary Wright, being duly sworn, says: That she is a resident of the *State of Nevada, County of Storey*. That she is unmarried and the widow of *Silas Wright*, who died in *California, January 3, 1895*. That her husband was the same person described in the petition of *Henry Smith*, praying for letters of administration, filed in the Superior Court of the City and County of San Francisco on Jan. 28, 1895.

(Signed by Notary Public.)

[NOTARY'S SEAL]

NOTE 1.—In California administration may be granted to persons not otherwise entitled to it, at the written request of the person entitled. [When the person entitled is a nonresident of the State affidavits taken *ex parte* before any officer authorized by the laws of this State to take acknowledgments and administer oaths out of this State may be received as *prima facie* evidence of the identity of the party.] C. C. P., sec. 1379.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2733.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5365.

NOTE 4.—In Montana the same. C. C. P., sec. 2448.

NOTE 5.—In Utah the same as in Montana. Comp. Laws., sec. 4049.

NOTE 6.—In North and South Dakota the same as in California. Comp. Laws., sec. 5719.

NOTE 7.—In Wyoming the same as in California. Stats. 1890-91, sec. 11, p. 255.

NOTE 8.—In Washington the same as in Montana, though not worded the same. Hill's Stats., sec. 900, subd. 1.

NOTE 9.—In Oregon the same in effect under the Court's power to select a person. Hill's Laws, sec. 1085, p. 710.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1029.

NOTE 11.—In Colorado the same as in California under a statute providing that letters shall not be issued to a person not entitled until notice has been given to the person entitled. A large discretion is given to the Court. Mills' Stats., sec. 4697.

**No. 1121.—Return and Account of Sales of Personal Property, etc.**

[TITLE OF COURT AND ESTATE.]

To the Hon. the said Superior Court of the *City and County of San Francisco, State of California*:

*Mary Jones, administratrix of the estate of Thomas Jones*, deceased, respectfully returns the following account of sales made by her under the order of the Judge of this Court, dated on the *thirteenth day of August, 1895*, and reports as follows, to wit:

That in pursuance of said order of sale she gave public notice for at least ten days, by publication in the *Daily Evening Report*, a newspaper published in said City and County [or by posting notices in three public places in said City and County], in which notice were specified the time and place of sale, as will also and more fully appear by the affidavit marked "A," hereunto annexed and made a part hereof.

That at the time and place specified in said notice, to wit, at the auction salesrooms of *A. F. Von Rhein & Sons*, northeast corner of *Montgomery and California streets*, in said City and County, on the *twenty-fifth day of August, 1895*, at *twelve o'clock M.*, she caused to be sold, through said *A. F. Von Rhein & Sons*, auctioneers, to the highest bidder for cash, the property described in said notice and mentioned in the account of sales attached to the affidavit marked "B," hereunto annexed and made a part hereof.

That at such sales the persons named in said account of sales became the purchasers of the articles, and at the prices set opposite their names respectively; that all of the said property was present at the time of selling; that the said sales were legally made and fairly conducted; and that the sums bid were not disproportionate to the value of the property sold; all of which will also and more fully appear by said affidavit marked "B."

Wherefore said *administratrix* prays that said sales be confirmed and approved, and declared valid.

(Subscribed and sworn to.)

See Nos. 1122, 1123, 1124.

**No. 1122.—Return of Sale of Personal Estate—Schedule.**

[TITLE OF COURT AND ESTATE.]

"A" Part of No. 1121.

*Charles Brown*, of said City and County, being duly sworn, says, that he is over the age of eighteen years; not interested in the estate of *Thomas Jones*, deceased, and is not a party thereto.

That he is the principal clerk and book-keeper in the office of the publisher of the *Democratic Press*, a newspaper published in said



*City and County, and as such clerk and book-keeper has charge of all advertisements in said newspaper. That a notice, of which the annexed is a true copy (insert copy), was published in said newspaper, for at least ten days, and as often during the period of said ten days as said paper was regularly issued, to wit, daily, Sundays excepted, from the fourteenth day of August, 1895, to and until the twenty-fifth day of August, 1895 (both days inclusive), [or, if the affidavit is of posting, then, omitting the words within the last brackets, say:] That a notice, of which the annexed is a true copy, was posted by him on the fourteenth day of August, 1895, in three public places in said City and County, to wit, one at the United States Postoffice, one at the Hall of Records, and one at the auction salesrooms of John Middleton & Son, in said City and County (or at whatever places notice was posted).*

(Subscribed and sworn to.)

[SEAL.]

**No. 1123.—Return of Sale of Personal Estate.**

[TITLE OF COURT AND ESTATE.]

**Schedule "B"—Part of No. 1121.**

*John Middleton, of said City and County, being duly sworn says that he is a member of the firm of John Middleton & Son auctioneers in said City and County; that the property mentioned in the annexed notice was sold by said auctioneers to the highest bidders, for cash, at the place mentioned in said notice, on the twenty-fifth day of August, 1895, the sales commencing at twelve o'clock M.*

*That all of said property was present at the time of selling; that the said sales were legally made and fairly conducted, and that the sums bid were not disproportionate to the value of the property sold.*

*That the account of sales attached to this affidavit is true and correct.*

(Subscribed and sworn to.)

## No. 1124.—Return of Sale of Personal Estate.

[TITLE OF COURT AND ESTATE.]

## ACCOUNT OF SALE—PART OF NO. 1121.

Name of Article Sold.	Name of Purchaser	Amount Bid.
1 Gold Watch and Chain .....	William Brown....	\$ 106 00
25 Shares Zenith Gold and Silver Mining Co....	Donald Ferguson..	2,525 00
100 Shares Cornucopia Copper Mining Co....	Artemus Ward....	700 00
50 Shares Nellie & Julia Mining Co.....	Orpheus C. Kerr...	800 00
5 Shares Smoky Valley Mining Co.....	P. Green Phule....	50 00
		\$4,181 00
CHARGES.		
Advertising in Bulletin.....	\$12 50	
Commissions, as per Agreement.....	50 00	
		62 50
Net Proceeds of Sales.....		\$4,118 00

O. F. VON RHEIN &amp; SON,

August 25, 1895.

Auctioneers.

See No. 1109. Petition to Sell Personal Property.

## No. 1125.—Return of Sale of Real Estate.

[TITLE OF COURT AND ESTATE.]

To the Honorable the Superior Court of the *City and County of San Francisco, State of California*:

*Mary Jones, the administratrix of the estate of Thomas Jones, deceased, respectfully makes the following return of her proceedings under the order of this Court, dated on the seventh day of December, 1895, authorizing said administratrix to sell certain real estate, and report, as follows, to wit:*

That in pursuance of said order of sale she caused notice of the time and place of holding such sale to be posted up in three of the most public places in said *City and County of San Francisco*, in which the land ordered to be sold is situated, and to be published in the *Daily Evening Report*, a newspaper printed and published in the said *City and County*, for three weeks successively next before such sale, in which notice the lands and tenements to be sold were described with common certainty; all of which will also, and more fully, appear by the affidavits marked respectively "A" and "B" [see Nos. 1126, 1127] herunto annexed, and make a part of this return.

That at the time and place of holding such sale specified in such notice, to wit, on *Monday, the fourth day of January, 1895,*

between the hours of *nine* o'clock in the morning, and the setting of the sun on the same day, to wit, at *twelve* o'clock M., and at the auction salesrooms of *O. F. Von Rhein & Son, 314 Montgomery street*, in said *City and County*. she caused to be sold in one *parcel*, judging it most beneficial to said estate, at public auction, to the highest bidder, upon the following terms, to wit, *for cash*, and subject to confirmation by this Court, the real estate, described in said order of sale and in said notice.

That at such sale *Stephen Wright* became the purchaser of said real estate for the sum of *thirty-one hundred* dollars, he being the highest and best bidder, and said sum being the highest and best sum bid.

That the said sale was legally and fairly conducted; that, as said *administratrix* believes, the sum bid is not disproportionate to the value of the property sold, and that a sum exceeding such bid at least ten per cent, exclusive of the expenses of a new sale, cannot be obtained, all of which will also and more fully appear by the affidavit marked "C," [see No. 1128] hereunto annexed and made a part of this return.

That the account of sales marked "D," [see No. 1129] hereunto annexed and made a part of this return, is true and correct.

And that before making such sale, to wit, on the *thirtieth* day of *December, 1895*, said *administratrix*, as required in and by said order of sale, duly executed an additional bond to the *State of California*, with sufficient sureties, duly approved, to wit, on the day last aforesaid, by the Judge of this Court, in the penal sum of *five thousand* dollars, conditioned that the said *administratrix* should faithfully execute the duties of the trust, according to law.

Wherefore said *administratrix* prays for a hearing upon this return, and that this Honorable Court make an order confirming the said sale, and directing conveyances to be executed to said purchaser, conveying all the right, title, interest, and estate of said intestate in the said premises at the time of his death, and all the right, title, and interest of said estate in the same, or that such other or further order may be made as is meet in the premises.

And your petitioner will ever pray, *etc.*

[Verified.]

See Nos. 1126, 1127, 1128, 1129, Forms "A," "B," "C," "D."

NOTE 1.—In California a return of proceedings is made and filed in the office of the clerk. A hearing may be asked for in the return, or by petition subsequently, and thereupon the Clerk fixes the day for the hearing, of which notice of at least ten days is given by the clerk, by notices posted in three public places in the county, or by publication in a newspaper, and briefly indicates the land sold, the sum for which it was sold, and refers to the return for further particulars. Upon the hearing, the Court examines the return and witnesses, and, if the proceedings were unfair, or the sum bid disproportionate to the value, and, if it appear that a sum at least ten per cent above the bid reported exclusive of the expenses of a new sale may be obtained, the Court vacates the sale and orders a new one, and then the same notice is given of the resale the same as if there had been no previous sale. If, when the report of the first sale is up for hearing, a responsible person offers in writing to pay ten per cent more than



the amount reported, the Court has authority [discretion] to accept such offer and confirm the sale to such person, or to order a new sale. C. C. P., sec. 1532.

[The practice in San Francisco is, when such increased bid is made, for the Judge to announce and read the bid from the bench and ask if any person will make a higher bid. If a higher bid is offered [orally or in writing] the Judge announces it and invites higher bids. If other bids are made they are announced, and the sale continues until the limit of offers is reached, and the property is then declared sold to the highest bidder, as if it were a public auction, which in fact it is. There is no statute for this proceeding, but it is clearly sanctioned by the discretion given to the Court in the section of the Code above cited.]

NOTE 2.—In Nevada the law directs the executor or administrator making a sale, at the next term of the Court, or at any subsequent sitting of the Court, upon notice of at least ten days, to be given in such manner as the Court or Judge may direct, to make a return of his proceedings to the Probate Judge. Then it is the duty of the Judge to examine the return. Gen. Stats., sec. 2883. Then the Clerk, without order, gives the notice the same as in California. Stats. of 1887, sec. 2, p. 32. Then the subsequent proceedings the same as in California. Gen. Stats., sec. 2883.

NOTE 3.—In Idaho the same as in California. Rev. Stats., sec. 5520.

NOTE 4.—In Montana the same as in California. C. C. P., sec. 2685.

NOTE 5.—In Utah the same as in California, with changes to fit terms of the Court, but the return of the sale must be filed within thirty days from the sale. Comp. Laws, sec. 4173.

NOTE 6.—In North and South Dakota the same as in Montana. Comp. Laws, sec. 5836.

NOTE 7.—In Wyoming the same as in California, with the necessary changes to conform to terms of the Court. Stats. 1890-91, sec. 27, p. 280.

NOTE 8.—In Washington the return must be made within ten days after the sale, and if the court is of opinion that the proceedings were unfair, or that the sum bidden is disproportionate to the value, and that a sum exceeding such bid at least ten per cent, exclusive of the expenses of a new sale, may be obtained, a new sale is ordered and conducted as if no sale had been. The notice is as the Court may direct. Hill's Stats., sec. 1020. See Stats. 1893, p. 85.

NOTE 9.—In Oregon, at the term of Court next following the sale of real property, a return of the proceedings concerning such sale is made. At such term, any of the persons cited to appear on the application for the order of sale may file his objections to the confirmation. Hill's Laws, sec. 1151, p. 731, and then the Court confirms the sale, and decrees that a conveyance be made, unless it appear that there were irregularities in the sale, or that the sum bidden for the property is disproportionate to the value thereof, and that a sum exceeding such bid at least ten per centum, exclusive of the expenses of a new sale, may be obtained therefor, in either of which cases the Court makes an order vacating the sale, and directing that the property be resold; and, upon such second sale the property, or any specific portion or lot thereof, ordered to be resold shall be sold as if no previous sale had taken place. In case no objections are made to the confirmation of the sale the Court nevertheless examines the proceedings concerning it, and, if it appears proper, makes the order of resale in the same manner and with like effect as if objections had been filed thereto. Id., sec. 1152, p. 731. See, also, Stats. 1893, p. 96.

NOTE 10.—In Arizona the same as in Montana. Rev. Stats., sec. 1160.

NOTE 11.—In Colorado, at the next term of Court, after a sale of real estate, the executor or administrator makes a report of his proceedings, accompanying the same with the advertisement of the sale, and proof of the publication thereof, and also with his affidavit that he did not, directly or indirectly, purchase any part of the estate sold, and has no interest, direct or indirect, in any such purchase. Mills' Stats., sec. 4768.

## No. 1126.—Return of Sale of Real Estate.

[TITLE OF COURT AND ESTATE.]

### SCHEDULE "A."

*Samuel P. Middleton*, of said *City and County*, being duly sworn, says, that *he* is over the age of eighteen years, not interested in or a party to the estate of *Thomas Jones*, deceased.

That on the *eighth* day of *December*, 1895, he posted true, full, and correct copies of the annexed notice of the time and place of holding the sale of real estate ordered by this Court, in the matter of said estate, on the *seventh* day of *December*, 1895, in three of the most public places in the said county, to wit, one copy of said notice at the auction salesrooms of *S. P. Middleton*, one at the *United States Postoffice*, and one at the *Sheriff's Office*, *Old City Hall*,

in said *City and County*; and that said notices remained posted for three weeks successively next before the day of sale mentioned in said notice.

(Subscribed and sworn to.)

See No. 1125.

### No. 1127.—Return of Sale of Real Estate.

[TITLE OF COURT AND ESTATE.]

#### SCHEDULE "B."

*Charles W. Coon*, of said *City and County*, being duly sworn says, that *he* is over the age of eighteen years, not interested in or a party to the estate of *Thomas Jones*, deceased.

That *he* is the principal clerk and book-keeper in the office of the publishers of the *Daily Evening Bulletin*, a newspaper printed and published in said *City and County*, and as such clerk and book-keeper has charge of all advertisements in said newspaper.

That a true, full, and correct copy of the annexed notice of the time and place of holding the sale of real estate ordered by the Superior Court of the *City and County of San Francisco*, in the matter of said estate, on the seventh day of *December, 1895*, was published in said newspaper for three weeks successively next before the day of sale mentioned in said notice, and as often during the period of said three successive weeks as the said paper was regularly issued, to wit: daily from the eighth day of *December, 1895*, to and until the fourth day of *January, 1896*, both days inclusive.

(Subscribed and sworn to.)

See No. 1125.

### No. 1128.—Return of Sale of Real Estate.

[TITLE OF COURT AND ESTATE.]

#### SCHEDULE "C."

*Samuel P. Middleton*, of said *City and County*, being duly sworn, says, that *he* is an auctioneer, duly authorized by law to sell real and personal property at public auction or vendue, residing and doing business in said *City and County*, and mentioned in the annexed notice; that at the time and place specified in said notice, to wit, on *Monday, the fourth day of January, 1895*, at twelve o'clock, M., and at the auction salesrooms of said auctioneer, at 314 *Montgomery street*, in said *City and County*, at the instance and by the direction of *Mary Jones*, the administratrix of the estate of *Thomas Jones*, deceased, said auctioneer, for and on behalf of said estate, offered for sale in one parcel, to the highest bidder, upon the following terms, to wit, for cash, subject to confirmation by the Superior Court of the *City and County of San Francisco*, the real estate described in said notice, and sold the same to *Ste-*

*phen Wright* for the sum of *three thousand and one hundred dollars*, he being the highest and best bidder for the same, and that being the highest and best sum bid; that the said sale *was* legally made and fairly conducted; that the sum bid is not disproportionate to the value of the property sold, and that, as this affiant believes, a sum exceeding such bid at least *ten* per cent, exclusive of the expenses of a new sale, cannot be obtained.

(Subscribed and sworn to.)

See No. 1125.

### No. 1129.—Return of Sale of Real Estate.

[TITLE OF COURT AND ESTATE.]

#### SCHEDULE "D."

ACCOUNT OF SALES of real estate belonging to the estate of *Thomas Jones*, deceased, made by *S. P. Middleton*, auctioneer, at his auction salesrooms, 314 *Montgomery street*, on the *fourth* day of *January*, 1895, at *twelve* o'clock M., at the instance and by the direction of *Mary Jones*, the administratrix of the estate of *Thomas Jones*, said deceased.

Description.	Name of Purchaser.	Sum Bid.
	<i>Stephen Wright...</i>	<i>\$3,100 00</i>
CHARGES.		<i>\$3,100 00</i>
<i>Advertising in Daily Evening Report.....</i>	<i>\$25 00</i>	
<i>Posting Notices.....</i>	<i>2 50</i>	
<i>Commissions, as per agreement.....</i>	<i>75 00</i>	
		<i>102 50</i>
<i>Net Proceeds.....</i>		<i>\$2,997 50</i>

(Signed and sworn to.)

See No. 1125.

### No. 1130.—Statement of Claims Presented.

IN THE SUPERIOR COURT of the *City and County of San Francisco*,  
*State of California.*

IN THE MATTER OF THE ESTATE OF }  
*Thomas Jones,* }  
*Deceased.* }

The undersigned, *administratrix* of the estate of *Thomas Jones*, deceased, at this, the *July* term, 1895, of said Superior Court, returns to said Court the following statement of all claims against the said estate which have been presented to her since the



eighteenth day of May, 1895, being the day of the first publication of notice to creditors [or, if the statement be not the first returned, then say, being the date of the return of the last statement], in which statement are designated the names of the creditors, the nature of each claim, when it became due, or will become due, and whether it was allowed or rejected by said administratrix:

Name of Creditor.	Nature of Claim.	When Due.	Allowed or Rejected.	Amt.
John Smith,	Promissory note,	June 5, 1894.		
	Money loaned,	April 1, 1894.	Allowed	\$1,500
	And horse sold,	April 29, 1894.		
George Taylor,	Funeral expenses,	May 19, 1894.	Allowed	200
Dr. C. G. Bryant,	Expenses of last sickness	May 18, 1894.	Allowed	250
Alfred Pope,	Balance of account,	March 3, 1894.	Allowed	500
D. P. Belknap,	Legal services,	January 5, 1894.	Rejected	100
				\$2,550

(Signed by administratrix.)

Dated July 6, 1895.

NOTE 1.—In California, at the same time at which he is required to return his inventory, the executor or administrator must also return a statement of all claims against the estate which have been presented to him, if so required by the Court, or a Judge thereof, and from time to time thereafter he must present a statement of claims subsequently presented to him, if so required by the Court or a Judge thereof. In all such statements he must designate the names of the creditors, the nature of each claim, when it became due or will become due, and whether it was allowed or rejected by him. C. C. P., sec. 1512.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2816.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5482.

NOTE 4.—In Montana the same. C. C. P., sec. 2622.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4142.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5810.

NOTE 7.—In Wyoming, when his inventory and appraisal is returned, he must accompany it with a statement of all claims against the estate presented to him or which are within his actual knowledge, and six months from the date of his letters he must file a statement of all claims submitted to him for allowance, and one year from the date of said letters he must then file a statement of all additional claims presented. In all statements he must designate the names of the creditors, the date when the claim is presented, the nature of each claim, when it became due or will become due, and whether it was allowed or rejected by him. Stats. 1890-91, sec. 20, p. 273.

NOTE 8.—In Washington the same as in California. Hill's Stats., sec. 996.

NOTE 9.—In Oregon. See Creditor's Claim.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1129.

NOTE 11.—In Colorado. See Creditor's Claim.

### No. 1131.—Subpoena—Estates.

[TITLE OF COURT AND ESTATE.]

THE PEOPLE OF THE STATE OF California send Greeting to Moses King and Homer Willard:

We command you, that you appear and attend before the Hon. R. C. Clark, Judge of the Superior Court of the County of Sacramento, State of California, at the courtroom of said

Court, at the courthouse in the said County of *Sacramento*, on the second day of *May*, 1895, at 11 o'clock A. M., then and there to testify in the matter of the said estate; and disobedience will be punished as a contempt by the said Court, and you will also forfeit to the party aggrieved the sum of one hundred dollars, and all damages which may be sustained by your failure to attend.

Witness: Hon. *R. C. Clark*, Judge of the said Superior Court, at the courtroom thereof, in the County of *Sacramento*, this nineteenth day of *April*, 1895.

Attest my hand and the seal of the said Court the day and year last above written.

[SEAL.]

### No. 1132.—Testimony of Subscribing Witness on Probate of Will.

[TITLE OF COURT AND ESTATE.]

*John Goodfellow*, being duly sworn in open Court, testifies as follows: I reside in the *City and County of San Francisco, State of California*.

I knew *W. G. Fair* on the first day of *January*, 1895, the date of the instrument now shown to me, marked as filed in this Court on the 24th day of *February*, 1895, purporting to be the last will and testament of the said decedent:

I am one of the subscribing witnesses to said instrument. I also knew at the said date of said instrument *Henry Badfellow* and other of said subscribing witnesses.

The said instrument was signed by the said decedent at the said *City and County of San Francisco*, on the first day of *January*, 1895, the day it bears date, in the presence of myself and of said *Henry Badfellow*, and the said decedent thereupon published the said instrument as, and declared to us the same to be, his last will and testament, and requested us in attestation thereof to sign the same as witnesses. The said *Henry Badfellow* and I then and there, in the presence of the said decedent, and in the presence of each other, subscribed our names as witnesses to the said instrument.

At the time of executing the said instrument the said decedent was over the age of eighteen years, and was of sound and disposing mind, and not acting under duress, menace, fraud, undue influence, or misrepresentation.

[To preserve his evidence to be referred to in case of contest prudent attorneys sometimes take a similar affidavit from all the witnesses.]

(Subscribed and sworn to.)

NOTE 1.—In California the evidence of the subscribing witness to a will must be reduced to writing. C. C. P., sec. 1314.

The testimony of each witness must be reduced to writing and signed by him. Id., sec. 1316.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2699.

NOTE 3.—In Idaho the same. Comp. Laws, secs. 5310-5312.

NOTE 4.—In Montana, the same. C. C. P., sec. 1344.

NOTE 5.—In Utah the same. Comp. Laws, secs. 4003-4005.

NOTE 6.—In North and South Dakota the same. Comp. Laws, secs. 5672, 5674.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 2, p. 243.

NOTE 8.—In Washington, Oregon, and Colorado there are no such regulations.

NOTE 9.—In Arizona the same as in California. Rev. Stats., secs. 982, 984.

### No. 1133.—Testimony of Applicant on Probate of Will.

[TITLE OF COURT AND ESTATE.]

*Timothy Markham*, being duly sworn in open Court, testifies as follows:

I am one of the persons named as executors in the document now shown to me, marked as filed in this Court on the *eighteenth* day of *April, 1895*, purporting to be the last will and testament of *Paul Clifford*.

I reside in the *City of Sacramento*, and am of the age of *twenty-one* years and upwards.

I knew said *Paul Clifford*; he is dead; he died on or about the *eleventh* day of *April, 1895*, at *his residence*, in the *City of Sacramento*, State of *California*.

At the time of *his* death *he* was a resident of the said *City of Sacramento*, and left estate, both real and personal, in the said *City of Sacramento*, State of *California*, and in the *City and County of San Francisco*, in said State.

The real estate is of the value of *seventy-five thousand* dollars or thereabouts, and the annual rents, issues, and profits of said real estate amount to the sum of *twelve thousand* dollars, or thereabouts.

The personal property is of the value of *thirty thousand* dollars, or thereabouts.

The said estate and effects, for, or in respect of, which the probate of said will has been applied for, do not exceed the value of *one hundred and twenty-five thousand* dollars. All of the estate of said deceased is common property, the same having been acquired after *his* marriage, except the real estate in *San Francisco*, which was owned by *him* before *his* marriage.

The said document came into my possession as follows, to wit: *The said document was handed to me by Jane Clifford, the widow of said deceased*, and I believe the same to be *his* last will and testament.

The next of kin of said deceased are said *Jane Clifford*, *his* widow, and *Charles Clifford*, and *Elizabeth Clifford*, *his* children, aged respectively, *forty, eighteen, and sixteen* years, all residing in the *City of Sacramento*.

On the *ninth* day of *April, 1895*, when said will was executed, said deceased was over the age of *eighteen* years, being of the age of *forty-five* years, or thereabouts, and was of sound and disposing mind.

(Subscribed and sworn to.)

See notes to No. 1132. Testimony of subscribing witness.



**No. 1134.—Reference of Claim.**

[TITLE OF COURT AND ESTATE.]

Whereas, the undersigned administrator of said estate doubts the correctness of the claim of *John Brown* for \$1,372.25, presented as a claim against said estate on June 9, 1894; now it is agreed that said matter in dispute, the claim aforesaid, may be referred to *Henry Smith, Esq.* [the Judge of said Court approving], for investigation and a report either allowing or rejecting said claim, or any part thereof if said claim is incorrect.

(Signed by both parties.)

NOTE 1.—In California, if [the executor or administrator doubts the correctness of any claim, he may agree in writing with the claimant to refer the matter to some disinterested person, to be approved by the Court. Upon filing the agreement and approval in the office of the Clerk, the Clerk enters a minute of the order referring the matter to the person selected], or, if the parties consent, a reference may be had in the Court; and the report of the referee, if confirmed, establishes or rejects the claim the same as if it had been allowed or rejected by the executor, or administrator and Judge. C. C. P., sec. 1507.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2811.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5477.

NOTE 4.—In Montana the same. C. C. P., sec. 2617.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4137.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5805.

NOTE 7.—In Wyoming the same as if it had been allowed or rejected by the executor or administrator. Stats. 1890-91, sec. 16, p. 273.

NOTE 8.—In Washington the same as that part of Note 1 in brackets. Hill's Stats. sec. 492.

NOTE 9.—In Oregon the same as in Washington. Hill's Laws, sec. 1137, p. 723.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1124.

NOTE 11.—In Colorado. See Claims.

**No. 1135.—Report of Referee of Account.**

[TITLE OF COURT AND ESTATE.]

In pursuance of an order of this Court, made and entered on the *twenty-seventh* day of *June, 1895*, appointing me, the undersigned, a referee, to examine the annual account of *Mary Jones, said administratrix of the estate of Thomas Jones, deceased*, rendered for settlement and filed in this Court on the *sixteenth* day of *June, 1895*, and to make report thereon, I do now respectfully report to this Honorable Court, as follows:

That I have fully and carefully examined said account and the vouchers produced in support thereof; that I have been attended upon said examination by *said administratrix and her counsel, and by Frank J. French, Esq., appointed to represent the minors interested in the said estate, upon the settlement of said account.*

That said account contains a just and full statement of all the moneys received and disbursed by *said administratrix* from the *sixteenth* day of *May, 1895*, the commencement of her administration of said estate, to the *sixteenth* day of *June, 1895*, including all sums of money belonging to the said estate which came to her hands as such *administratrix*, or were received by any other per-

son by her order or authority for her use as such *administratrix* during said period.

That the amount of said money thus received, as aforesaid, was the sum of *seven thousand one hundred and sixty-five dollars*, and the amount thus disbursed, as aforesaid, was the sum of *one thousand three hundred and sixty-nine dollars and fifty cents*, leaving in the hands of the said *administratrix* the sum of *five thousand seven hundred and ninety-five dollars and fifty cents*, to the credit of said estate, subject to the payment of the claims allowed against said estate and the expenses of closing the administration.

That for all items of expenditure proper vouchers were produced before me, as filed in this Court, except for three items, each below twenty dollars, and amounting in the aggregate to a sum not exceeding five hundred dollars, to wit, the sum of *two dollars*; for these, no vouchers were produced, but it was proved before me, by the oath positive of the said *administratrix*, as attached to the said account, which oath is uncontradicted, that such items were actually paid by her, at the places where, the dates when, and to the parties stated and set forth in said account.

I further report, that, after having fully and carefully examined said account, I am satisfied that the same is true, just, and correct, and entitled to allowance and approval.

I therefore respectfully recommend its allowance and approval, and that a decree be entered that said account as presented be settled, approved, and allowed.

All of which is respectfully submitted.

Signed by

, Referee.

NOTE 1.—In California the referee hears and determines the matter, and makes his report. The same proceedings are had in all respects, and the referee has the same powers, and is entitled to the same compensation, and subject to the same control, as in other cases of reference. The Court may remove the referee, appoint another in his place, set aside or confirm his report, and adjudge costs, as in actions against executors or administrators, and the judgment of the Court thereon is as valid and effectual, in all respects, as if the same had been rendered in a suit commenced by ordinary process. C. C. P., sec. 1508.

NOTE 2.—In Nevada the same. Gen. Stats., sec. 2812.

NOTE 3.—In Idaho the same. Rev. Stats., sec. 5478.

NOTE 4.—In Montana the same. C. C. P., sec. 2617.

NOTE 5.—In Utah the same. Comp. Laws, sec. 4188.

NOTE 6.—In North and South Dakota the same. Comp. Laws, sec. 5806.

NOTE 7.—In Wyoming the same. Stats. 1890-91, sec. 17, p. 273.

NOTE 8.—In Washington the same in meaning, and the award has the same effect as the award in other civil proceedings. Hill's Stats., sec. 998.

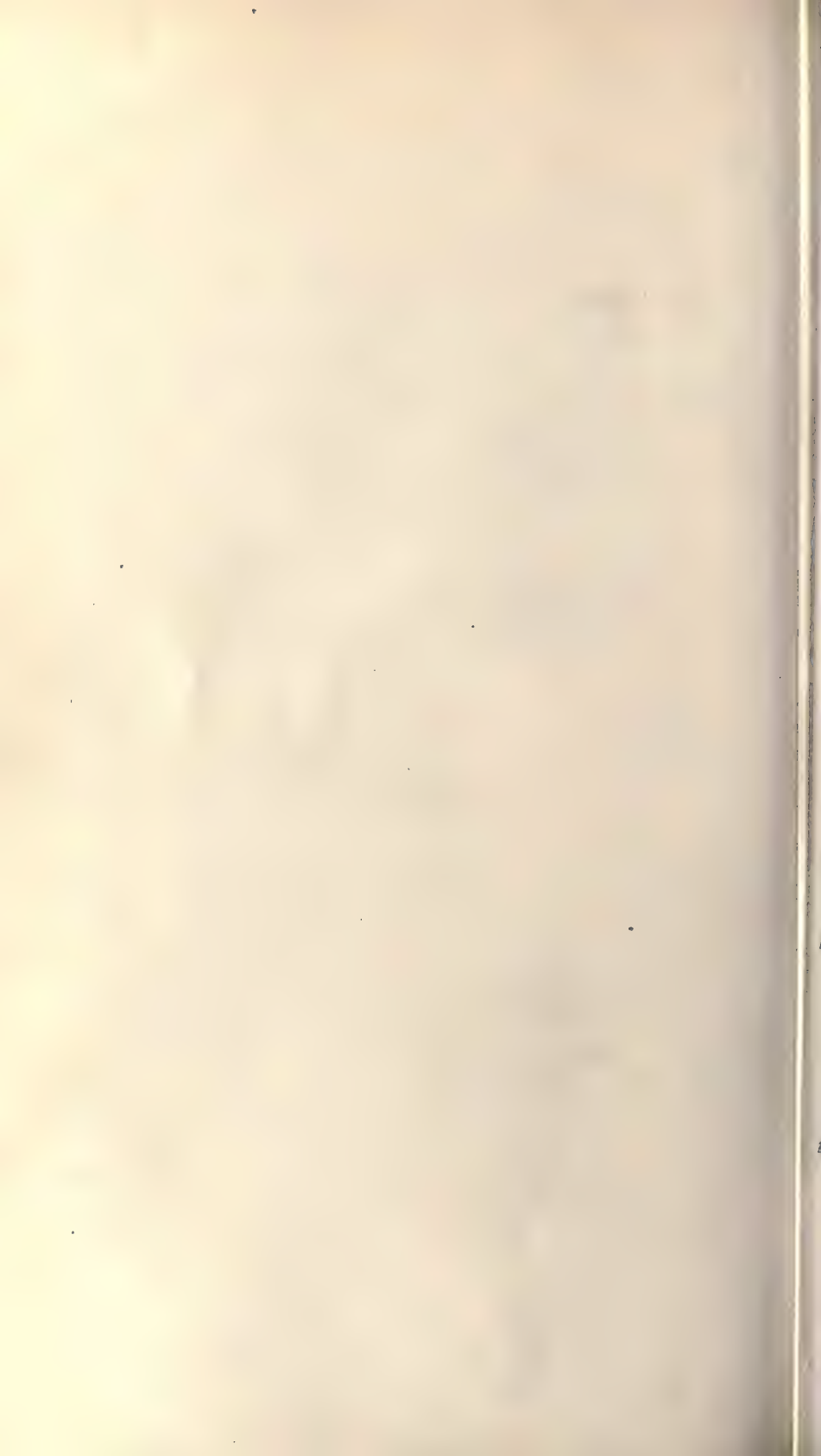
NOTE 9.—In Oregon the same as in California. Hill's Laws, sec. 1138, p. 726.

NOTE 10.—In Arizona the same as in California. Rev. Stats., sec. 1126.

NOTE 11.—In Colorado, see Claims.

### No. 1136.—Will.

See Nos. 317, 318, 319, 320, in part first and notes to No. 317.





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